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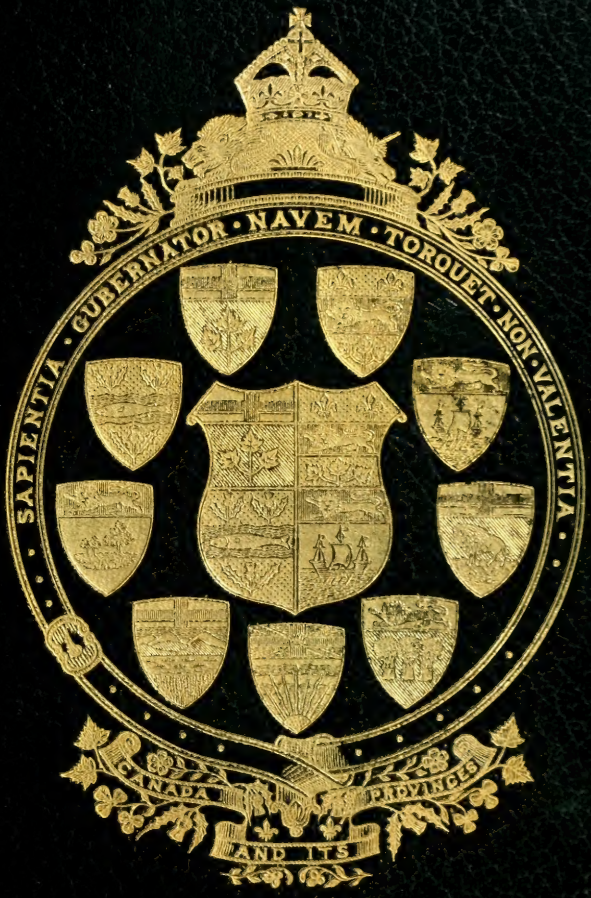

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Authors' Edition

CANADA

AND ITS PROVINCES

IN TWENTY-TWO VOLUMES
AND INDEX

VOLUME VI

THE DOMINION
POLITICAL DEVELOPMENT

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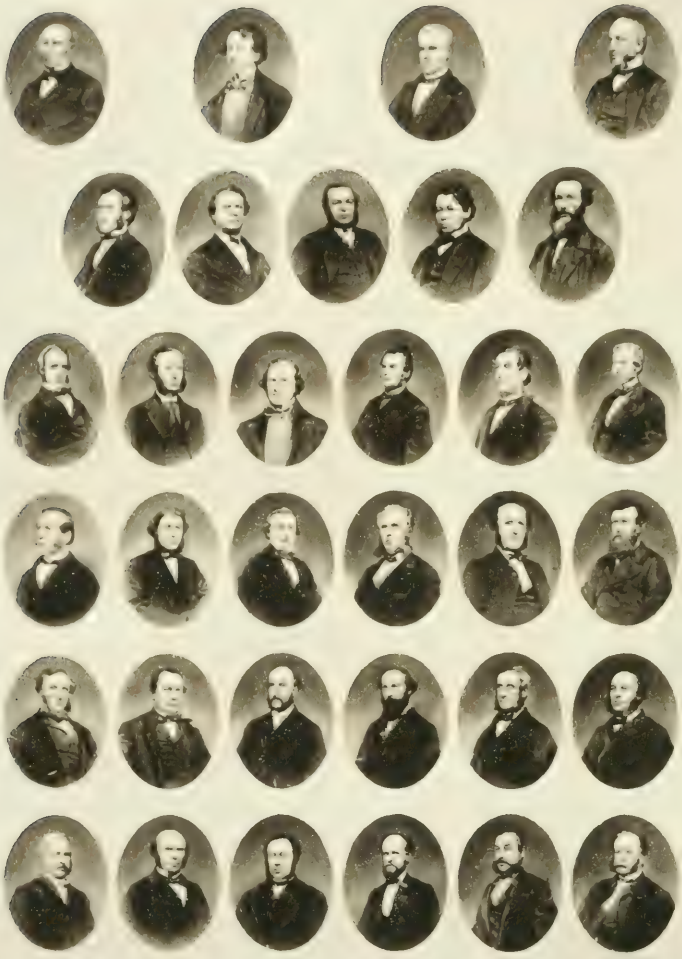

CANADA
AND ITS PROVINCES

A HISTORY OF THE CANADIAN
PEOPLE AND THEIR INSTITUTIONS
BY ONE HUNDRED ASSOCIATES

ADAM SHORTT
ARTHUR G. DOUGHTY
GENERAL EDITORS

VOLUME VI

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Prepared expressly

Canada and Its Provinces"

THE FEDERATION: GENERAL OUTLINES, 1867-1912

THE FEDERATION: GENERAL OUTLINES, 1867-1912

TIME may show that the federation of Canada in 1867 is one of the important events in modern world history. It was separated by less than eighty years from the completion of the greatest of all federations—that of the United States. One parallel between the United States and Canada is striking. The American Union, like the Canadian, first consisted only of provinces on, or near, the Atlantic coast. Few dreamed, in 1789, that the United States would soon extend beyond the Mississippi to the Pacific. The Dominion of Canada, when first created, extended only to the western limits of the present Province of Ontario. The extension to the Pacific was more rapid than had been that of the United States: four years after the Dominion was first formed Canada had reached out across the continent.

The really vital task in the history of Canada, since 1867, has been the creating of a great state from the divers elements which skilful statesmanship had brought together under a central parliament. So far is the task still from completion that it is only well begun. East and West, French and English, are not yet solidly one in Canada. In the older Canada sectionalism ran riot. When the Constitutional Act of 1791 established the two provinces, Upper Canada and Lower Canada, it was expected and even intended that they should remain different in type; one was to be English, the other French; one was to have English law in civil affairs, the other French law; one was to be prevailingly Protestant in character, the other Roman Catholic. For fifty years the two provinces grew, side by side, indeed, but almost wholly alien from each other. Their internal policies were petty and

the strife between parties was singularly intense and bitter. When, in 1837, this strife reached the stage of an appeal to arms, it was time for a larger-minded statesmanship to take Canada in hand. The Earl of Durham was sent out from Britain. He probed the situation to the bottom, found that the chief enemy of peace was sectionalism, and proposed a remedy. Henceforth there should be but one parliament; all Canada should be under a single legislature.

Thus it came about that the Union Act of 1841 was passed by the imperial parliament. Canada had then but one legislature. In it sat French and English, and they could discuss their differences face to face. But the Union did not work well. The two Canadas were united by act of parliament, but they were not united in any other sense. Each section treasured its old ideals. Each party had even its English and its French leader. The old sectional differences remained. Parties were almost evenly divided. In the end the machinery of the Union broke down, and then the new task of the political leaders in Canada was to evolve a real and workable union.

The new system was the federal system established in 1867. Past failure had made wider vision necessary, and now the Canadian leaders reached out to form a state greater than the old Canada. In the East, Nova Scotia, New Brunswick, and Prince Edward Island came into the union, though Newfoundland stayed out. In the West, Canada secured the mighty heritage of prairie and mountain that stretches from the western borders of Ontario to the Pacific Ocean. A petty colony had become continental in extent. This vast territory might be made the home of a great nation, and to work towards this goal has been the task of the leaders in Canadian life since 1867. The history of Canada during this momentous period is not a tale of courts and camps, of the workings of diplomacy to avert or to lead to war, of the struggles between those who cherish what is old and what they think is good and those who dream of a new and better order. The pomp of a stately and well-ordered society, movements in art and literature, the menaces and friendships of other nations, have but little place in the narrative. The story is

one of internal organization, of trade policy, of the occupation of land hitherto almost unpeopled, of the opening up of communication and the building of railways and canals, of the working of political institutions, of the disputes of the central government in its relations with the provincial governments and of the clear definition of their respective powers. In one sense it is not a dramatic tale ; it has little of the glitter and ceremonial of old-world movements. But, none the less, it is a profoundly romantic story of the birth of a nation and of its passing from neglected obscurity into a conspicuous place. The Canadian statesmen of 1867, with one of their chief problems that of contriving, somehow, to build a railway from Quebec to Halifax, might well be staggered before Canada's problem of to-day as to how she can best discharge her duty in respect to world politics.

Two figures stand most conspicuous in this later history of Canada ; they are Sir John Macdonald and Sir Wilfrid Laurier. Since 1854 one or other of these leaders has been in the forefront of the political battle. During this time Sir John Macdonald was, in effect, if not always in name, prime minister for nearly thirty years, and Sir Wilfrid Laurier for half that period.

To hold the divergent elements in Canada together in one state, and to enlarge this state so as to include the whole of British North America, was the chief task which Macdonald faced as prime minister in 1867. He was well qualified for the work by his amazing skill and dexterity in managing men. He was aided too by the times. The federated colonies had just seen their mighty neighbour, the United States, fight through a bloody civil war on the question of national unity, and they had seen the forces of unity triumph. The lesson was not lost on them. Skilful leadership had brought them together, and the same skilful leadership now set to work to forge them into one people.

In the first instance, at least, it was to be actual links of steel that held the union together. A railway was soon built to bind the Maritime Provinces to the older Canada, and a greater railway was to stretch westward to link the far Pacific with the Atlantic, across Canadian territory. There were

fewer than fifty thousand people, other than native Indians, west of Ontario, when Canada undertook to build a railway for thousands of miles across far-spreading plains and through towering mountains. No wonder many said that the thing could not be done ; no wonder that governments rose and fell on this issue. But the thing was done, and the Canadian Pacific Railway stands to-day as the first great achieved material task of the new Canada.

To run these two parallel lines of steel from ocean to ocean may seem but a small thing for a people to achieve. It meant, however, things greater than itself. In the older Canada, the story of settlement is one of hewing step by step a painful path inland from river and lake, of laborious warfare with the enveloping forest, of a lifetime spent in winning green fields from this forest's encroaching strength. The rough wagon road was then the symbol of advance ; the ox and the horse were the motive power by which the advance was achieved. In the newer Canada, the Canadian Pacific Railway led to a different tale. The straight-driven line of steel, the long, swiftly moving train, the mysterious, the almost incalculable, power of steam are the symbols of its advance. It was long before the new meaning of these agencies for settlement was felt in Canada. The West grew but slowly, even after the Canadian Pacific Railway had been built. But the pause was only to gather strength for a greater effort. The line from the East to the West had been completed by 1885, and ten or twelve years later the movement westward was strong ; in twenty years, that is by 1905, it had begun to attract world-wide attention, and soon it became one of the wonders of the world. With unprecedented rapidity towns and cities spring up in the new West. Not one, but three lines of railway are reaching out from the Atlantic to the Pacific, and a great population will soon dwell in the once empty region which Canada acquired after Confederation.

The commercial system under which the development should be regulated has from the first been the subject of acute controversy in Canada. Twelve years after Confederation was achieved, Canada turned its back definitely upon the policy of a tariff for revenue only and adopted that of a

protective tariff. It was Sir John Macdonald who led in this policy, and it remains that of the conservative party. The liberal party, while not definitely committed to free trade, has aimed at preserving a low tariff. In pursuance of this aim, Sir Wilfrid Laurier, who came into power in 1896 and remained prime minister until 1911, took two steps towards freer trade. He gave a reduction of one-third of the tariff to British manufactures, and he agreed to a limited reciprocity in trade with the United States. The conservative party opposed both measures and drove the liberals from power in 1911 on the reciprocity issue. Thus one striking phase of the development of Canada since Confederation is represented by protection. The older Canada had a low tariff; the new Canada has a high tariff.

The federation of the Canadian provinces involved the working of a new and as yet untried system. An essential feature of federal government is the division of power between the central federal authority and the local authority in each province. The avowed aim of Sir John Macdonald was to make the provincial governments subordinate to the federal government at Ottawa. To carry out this policy he thought, while still prime minister, of becoming a member of the Ontario legislature at Toronto in order to keep the province in line with the policy of his administration. The liberals took strong ground on their policy of provincial rights, and claimed that the provinces, within their assigned spheres, were sovereign communities, in the same sense in which the federal government was sovereign. Keen disputes followed. The tribunal to which the ultimate appeal went was the Judicial Committee of the sovereign's Privy Council in London, and after Confederation this body was frequently called upon to interpret the meaning of the British North America Act. The ordinary reader of history cannot be expected to take a keen interest in the niceties of the constitutional points involved. Yet the history of Canada since Confederation is largely occupied with them. They are, too, of vital moment. To the people of each province the degree of authority which their legislature should have was of profound concern. Did their legislature or did the federal govern-

ment control the liquor traffic? What were the rights of a province like Ontario to the natural resources, the minerals and timber, within its borders? What control might the provinces exert over fisheries? More important than all this perhaps was the question whether the provinces had complete control of education.

This last problem has proved disturbing in Canadian politics from the date of Confederation. Owing to certain factors in its being, Canada is the land of compromise in politics. Nearly two-fifths of its people adhere to the Roman Catholic faith, and more than one-half of these Roman Catholics are French in origin and speech. The Province of Quebec, the oldest and the most coherently organized of the provinces, is overwhelmingly Roman Catholic in faith and French in speech and race. Its neighbour Ontario, the most populous of the provinces, is overwhelmingly Protestant in faith and English in speech and race. The key to much of the history of Canada is to be found in the natural antagonism between these provinces, and in the appeals to religious and racial passions, which were made easy by their contrasts. In each province the minority had certain educational rights guaranteed under the constitution; the Roman Catholics of Ontario had the right to employ the taxes paid by them for education in the support of their own separate schools; the Protestants in Quebec had similar rights. Naturally the Roman Catholic minority wished for such rights in the other provinces. Under the terms of federation education was left in the control of the provincial legislatures; but, at the instance of the Roman Catholics, a clause was inserted in the bill giving the Dominion parliament the power under certain conditions to protect the educational rights of minorities and to pass legislation that might override provincial action. In 1890 the legislature of Manitoba abolished the Roman Catholic separate schools. At once an agitation began to force the Dominion government to intervene. Since the leaders of the Roman Catholic Church in Manitoba were chiefly French Canadians, their allies in the Province of Quebec took up their cause. Protestant Ontario ranged itself on the opposite side, and once again

a question was raised which appealed to the old antagonism between the two chief provinces.

The question broke the long tenure of power by the conservatives. In 1891, while the dispute was still unsettled, Sir John Macdonald died, and the Manitoba School Question proved a deadly heritage to his successors. At last Sir Charles Tupper, the conservative leader, undertook to enact legislation which should re-establish separate schools in Manitoba. The liberal party united to oppose this overriding of the authority of the province in respect to education. It was the old liberal cry of provincial rights. The conservative government fell on the issue. Wilfrid Laurier (afterwards Sir Wilfrid) came into power and held office continuously for fifteen years. He fell when he advocated greater freedom of trade with the United States. It was destined that while he held power new issues should arise in Canadian politics, issues that mark the greater sense of independence and responsibility, and the broader outlook, of a growing nation.

Any one who surveys the history of the older Canada will find traces everywhere of what may be called the colonial habit of mind. The younger states of the British Empire grew up with a sense of dependence on the mother country. She had occupied or conquered the territory which they held ; she retained final authority in their affairs, and it was her duty, they said, to protect them from danger ; they were children in the arms of the strong mother. As late as 1861, when the Civil War broke out in the United States, this attitude was much in evidence in Canada. The *Trent* affair led to the possibility of war between Great Britain and the United States, and it was certain that if war broke out the chief aim of the United States would be to conquer Canada. In Britain there was acute concern and alarm over this prospect, and prompt steps were taken to throw a military force across the sea. It was striking that, at the same time, there was singular apathy in Canada at the prospect of war ; the Canadians appeared to think that it was for Britain to look after them, and they concerned themselves but slightly over the affair. They had the colonial habit of mind.

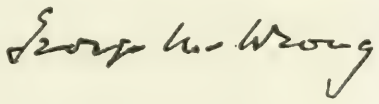
A new outlook was bound to come in time, and it came

during the ministry of Sir Wilfrid Laurier. In Canada a growing consciousness of national life made the people restless at being the mere wards of the parent state. The Canadians felt that they must learn to take care of themselves. As a result of this state of mind Canada undertook to provide for her own defence on land and the garrisons of imperial troops in Canada were withdrawn. The new problem to face was that of defence on the sea. This issue was forced on the minds of the Canadian people by a seeming menace to Britain's naval supremacy. Germany began to build a mighty fleet, and the rivalry between her and Britain attracted universal attention. Usually the Canadian farmer was little disposed to give thought to the larger issues involved in foreign policy. He had no conviction that Canada should play a part in naval defence. He could hardly believe that there was any danger to himself. But the constant discussion in the newspapers led him to conclude that there was danger to Britain, and, thoroughly British at heart, he felt that the time had come to aid instead of being merely aided. It may be said with truth that nothing has served more effectively to develop the sense of national life in Canada than the naval question. There is a long step between the days when Canada had to ask imperial aid to build the Intercolonial Railway and the days when she began to face the problem of becoming the partner of Great Britain in national defence.

Such has been the evolution of Canada since Confederation. Canadian politics have in some respects close parallels with the politics of Britain. The struggle for Home Rule in Ireland becomes in Canada the struggle for provincial rights. The same principles which cause sharp strife in Britain over the place of religion in education are expressed in Canada in the struggle over separate schools in Manitoba. The problem of tariff reform in Britain is in Canada this same issue between free trade and protection. The problems of federal government in Canada steadily attract more attention in Britain as suggesting possible solutions of some of the difficulties of the homeland. Britain, with its long history, naturally has questions in regard to landholding and taxation from which

Canada is free. Yet is it true that the two peoples are dealing with questions steadily becoming more similar in character, and herein is to be found one key to their growing unity.

The real history of a people is not fully told in the political struggles. History dwells upon politics because they touch the most obvious and general interests of a state. Apart from politics lies a great world of thought and life in regard to which history is for the most part silent. Strife, tumult, the heat of debate, the exciting incident, the stately ceremonial, these have a lesser part in the real life of a nation than has the quiet thing we call growth. Education and religion play their silent part in this process, and of this inner life history writes few annals. In Canada a young people has, since 1867, been slowly finding itself. In warehouses and factories, on railways, ships and farms, busy men have been growing into larger manhood, and this is the vital thing in their life. 'Happy the nation which has no history,' says the old proverb. The story of the development of Canada cannot be told on the written page. It is to be read in the character of her people, the thoughts they cherish, the insight into the meaning of life which they possess. Poets, men of letters, religious leaders, great teachers, have as yet but little place in the annals of Canada. On them, however, the real life of the nation depends, and in the growth of their influence lies the best hope of the future.



THE NEW DOMINION

1867-1873

THE NEW DOMINION, 1867-1873

I

CHIEF ARCHITECTS OF CONFEDERATION

ON July 1, 1867, the new Dominion of Canada began its career. 'The Act of Union,' said Lord Monck in his speech on opening the first Confederation parliament, 'has laid the foundations of a new nationality that I trust and believe will ere long extend its bounds from the Atlantic to the Pacific Ocean.' But the work was only begun. The Confederation Act contained the plans and specifications of a structure yet to be reared.

The legislative union of Upper and Lower Canada had been dissolved. In its place stood a federal union comprising old Canada—henceforth to be known as Ontario and Quebec—Nova Scotia and New Brunswick. It was necessary at once to organize a government for the Dominion and for each province and to make provision for the election of a central parliament and of four provincial legislatures. A railway was to be built connecting old Canada with the Atlantic provinces. A new and vast region, extending from the Great Lakes to the Pacific Ocean, was to be brought within the scope of the 'new nationality,' and eventually to be connected with old Canada by railway. Above all, the whole was yet to be vitalized, to be converted from a mere legal entity into a living organism.

The public career of the first head of the new government, Sir John A. Macdonald, covered almost the whole period from the Union to Confederation and nearly a quarter of a century beyond this; and he played a large part in moulding, and a still larger part in working, the institutions of Canada. He was a native of Glasgow, but had spent little more than his

infancy in Scotland. When he arrived in Upper Canada in 1820 the country was in the pioneer stage, and there was but a fringe of population along the St Lawrence. Macdonald's father was poor, and when the lad left school at fifteen and entered upon the study of the law, it was under an arrangement which enabled him to earn his living, and perhaps to help his family. He carried a musket against the rebels of 1837. One of his first briefs was for Von Shoultz, a Polish gentleman, who was hanged for his part in the rebellion.

Macdonald first entered public life as conservative candidate in Kingston in 1844, ' to fill a gap,' as he afterwards said. The legislature had been dissolved by Sir Charles Metcalfe, Governor of Canada, as a result of his rupture with the Baldwin-La Fontaine ministry. Broadly speaking, the issue was self-government. This at least was what the reformers contended for, while Sir Charles Metcalfe believed that in resisting them he was fighting against forces that tended to disintegrate the Empire. His attitude made him virtually the leader of the conservative or tory party in Canada during the election of 1844, and Macdonald in his election address accepted his view.

But Macdonald's demeanour in his early parliamentary career showed that he was watching events and preparing to take his own course. He spoke seldom, and observed and studied much. One of his contemporaries says that he often looked ' half careless and half contemptuous, sometimes in the library while the assembly was in a tumult, often buried in a study of constitutional history.' He took office in 1847 under William Henry Draper, who was Metcalfe's chief friend and adviser. He shared in the fate of the ministry in 1848. The triumph of the reformers marked the end of the old order ; henceforth Macdonald was to take his part in the new era of self-government.

The first signal evidence of his skill as a political architect was given in the formation of the coalition government of 1854. His policy at this time, as described by his biographer, Sir Joseph Pope, was to draw into the conservative ranks all men of moderate political views, no matter under what name they had previously been known, and to bring the French

SIR JOHN A. MACDONALD

From the painting by A. Dickson Patterson

Canadians to a realization of the fact that their natural alliance was with the conservative party. At this time the party took the name of 'Liberal Conservative.' Robert Baldwin, the distinguished leader of the reformers, who no longer took an active interest in public affairs, in a letter to Francis Hincks gave his benediction to the new combination, and those who agreed with him were called 'Baldwin Reformers.' Macdonald was also successful in winning over to his side the dominant party in Quebec, an alliance which remained firm up to the time of Confederation and for some years afterwards.

Until Confederation John A. Macdonald had not a strong and sure hold upon Upper Canada. Power alternated between him and the reformers, of whom George Brown was the real, though not always the titular, leader. Finally, in the early sixties, came deadlock, which was broken only by Brown's offer of co-operation with Macdonald for the purpose of federating the provinces. Macdonald and Brown entered a coalition administration under Sir Étienne P. Taché, whose venerable and benign personality made him acceptable to both. Soon after the death of Taché, Brown left the coalition, and the undisputed leadership fell to Macdonald, whose humour and urbanity gave him great personal charm, enabled him to turn enemies into friends, and won him an immense following. He was, however, much more than a clever politician and a gay companion. He rose to his opportunities, and he made a greater and more dignified figure in confederated Canada than in the smaller Union. He was a typical conservative, disliking constitutional change and holding aloof from popular agitation. Nearly all the great movements with which he was associated were begun by others, and in some cases opposed by him at the outset.

He was never attracted by the idea of federalizing the existing union of Upper and Lower Canada. Ultimately Confederation appealed to him as a means of enlarging the territory and increasing the strength of Canada. His imperial sympathies were strong and genuine; his hope, as he said in a speech on Confederation, was that Canada should

become not a mere dependent colony of England, but 'a friendly nation—a subordinate but still a powerful people—to stand by her in North America, in peace or war.'

Although George Brown was not a member of the government or of the first parliament, he occupies a large place in the history of the time. It did not fall to his lot to administer the government of the new Confederation, but he was one of its architects, if not the chief architect. He had filled a great place in Upper Canada, as tribune, journalist, agitator, advocate of causes. Born near Edinburgh in 1818, he came to New York with his father as a young man, had some experience in journalism there, moved to Toronto in 1843, founded first the *Banner* as a champion of Free Church Presbyterianism, and then the *Globe* as the advocate of responsible government, taking sides with Robert Baldwin and the reformers against the governor, Sir Charles Metcalfe. This struggle over, and responsible government apparently safe, he worked for the secularization of the clergy reserves and generally for religious equality. He became a powerful opponent of the influence of French Canada and of the Roman Catholic Church in politics, and a champion of Upper, as against Lower, Canada. At length he decided that justice could be obtained for Upper Canada by giving it representation according to population, instead of continuing the arrangement by which the two sections were equally represented. As Lower Canada resisted this change, it was suggested that a solution might be found in federalizing the Union, thus leaving to each section the enjoyment of its own liberties and local laws. In order to carry out this arrangement, Brown consented to join forces temporarily with Macdonald, and was persuaded to enter a coalition government with his political rival and personal enemy. Various reasons were assigned for his leaving the coalition, but the strongest real reason was that the two leaders were not personally congenial, and neither would yield to the other. Some of Brown's most intimate friends had opposed his entering the coalition. It was in the nature of things temporary, and the first opportunity for ending it was eagerly seized.

GEORGE BROWN

From a photograph in the possession of Mrs. Frank Smith, Toronto

William McDougall first became prominent in public life as one of the leading spirits of the 'Clear Grit' party, a radical organization which, in the time of Baldwin and La Fontaine, advocated the election of officials, universal suffrage, vote by ballot, fixed dates for elections and for the assembling of the legislature, free trade and direct taxation, the reduction of lawyers' fees and the abolition of the Court of Chancery. As a 'Clear Grit' and editor of the *North American* he came into violent conflict with George Brown and the *Globe*, but his paper was subsequently amalgamated with the *Globe*, of which he became chief editorial writer. He played a prominent part in the Reform Convention of 1859, which advocated the federation of Canada, and he was one of the earliest advocates of the union of the North-West Territories with Canada. He was a lawyer as well as a journalist, and in the later years of his life gave most of his time to his law practice. McDougall was a man of commanding presence, with a concise, impressive delivery. His mind was at once radical and constructive, and there can be little doubt that his adherence to the coalition of 1864 was due to his desire to be connected with two great constructive works, Confederation and the acquisition of the West. When he was appointed lieutenant-governor of the North-West Territories and was prevented by Riel from entering on his duties, his political prospects were seriously impaired; but his fault on this occasion was merely failure to execute an impossible task.

For some years there was an attempt to carry on government by means of a coalition. Confederation had been brought about by a truce between George Brown with his Upper Canada followers, and Sir John Macdonald with the conservatives. Brown's party friends in Lower Canada had held aloof, and many of the Upper Canadian reformers were distrustful of the alliance and glad when Brown withdrew from the coalition government.

As the first election under the new system drew near, it was necessary to settle definitely the attitude of the reformers of Upper Canada towards the coalition. On June 27, 1867, a convention of the reformers of Upper Canada was held. There were present at this gathering William McDougall and

William P. Howland, who had entered the ministry as liberals. They upheld their right to remain in that position. M^c^Dougall argued that the old party issues were dead and buried, and that the Dominion of Canada was beginning with a clean slate: that the work designed by the framers of Confederation was not finished, but only begun. He and Howland defended their positions with skill and force, but they were overwhelmed by George Brown, Alexander Mackenzie, and the other opponents of the coalition. The convention resolved that the coalition of 1864 could be justified only on the ground of imperious necessity, as a means of obtaining just representation for the people of Upper Canada, and should end as soon as this measure was attained; that the temporary alliance between the reform and conservative parties should cease; and that there should be an end to government maintained by a coalition of public men holding opposite principles.

II

THE COALITION GOVERNMENT

SIR JOHN MACDONALD persevered in his attempt at governing by coalition, and it may be convenient at this point to show how the experiment worked out. The coalition government won the election of 1867. The people practically identified support of the government with support of Confederation. Hence the vote of Nova Scotia was hostile to Confederation as well as to the government, while in Ontario, formerly a stronghold of reform, the government was sustained by a large majority, and George Brown himself was defeated in the riding of South Ontario.

Evidently, therefore, a considerable number of Ontario reformers were willing to go a little farther in support of the coalition than the reform convention had resolved. They stood midway between Brown and M^c^Dougall. Once the new system of government had been firmly established they returned to their old party allegiance. The reformers would not accept as leader any of the liberals with whom Macdonald allied himself. Some of these leaders retired from public

life ; some, like Sir Leonard Tilley, went over to the conservative party. Before the first parliament had expired all trace of the composite character of the ministry had disappeared. It had become conservative. During the same time the coalition government established by the influence of Sir John Macdonald in Ontario under the leadership of John Sandfield Macdonald was defeated and its place taken by a liberal ministry.

Curious questions arose as to the composition of the coalition government of Canada. At first there were three liberals and two conservatives from Ontario, but when the conservatives won a majority of the Ontario seats in the election of 1867, it was contended that the proportions should be reversed. Sir John Macdonald was attacked by both liberals and conservatives, each alleging that their opponents were favoured. He can hardly have deplored the change which eventually surrounded him with his own party friends, but there is no reason to suppose that this result was mainly due to his design. He loved power, but he cared more for its substance than for the name of the instrument by which it was wielded. By temperament he was conservative ; but he moved in a different plane from many of his zealous partisans. He was capable of dissociating himself from party prejudice, if he deemed this necessary for the promotion either of personal ambition or of the public service. Hence his attempts at forming coalitions, which failed mainly because the people did not want them, because the energetic and aggressive men of the parties were too strong for them; and this was especially true of the reformers of Ontario.

The construction of the first ministry illustrates some of the political difficulties to be solved. Party politics, religion, race and locality had each to be considered. The ministry must be composed in almost equal proportions of liberals and conservatives. Each province was to be represented according to population. There must be so many French-Canadian representatives of Quebec, and also a special representative of the English minority in that province. There must be so many Protestants and so many Roman Catholics, and of the Roman Catholics one must be Irish. At length the delicate

task was completed, and the ministry was formed as follows :

Conservatives

JOHN A. MACDONALD, minister of Justice and attorney-general.
GEORGES É. CARTIER, minister of Militia and Defence.
ALEXANDER T. GALT, minister of Finance.
ALEXANDER CAMPBELL, postmaster-general.
JEAN CHARLES CHAPAIS, minister of Agriculture.
HECTOR L. LANGEVIN, secretary of state for Canada.
EDWARD KENNY, receiver-general.

Liberals

WILLIAM McDOUGALL, minister of Public Works.
WILLIAM P. HOWLAND, minister of Inland Revenue.
ADAM J. F. BLAIR, president of the Privy Council.
SAMUEL L. TILLEY, minister of Customs.
PETER MITCHELL, minister of Marine and Fisheries.
ADAMS G. ARCHIBALD, secretary of state for the Provinces.

Writs were issued for the first general election in August 1867, and the elections were held during August and September. The government won a decisive victory in every province except Nova Scotia.

The first parliament assembled on November 6, 1867. The speech from the throne declared that the Act of Union conferred upon parliament the right of ' reducing to practice the system of government which it has called into existence, of consolidating its institutions, harmonizing its administrative details, and of making such legislative provisions as will secure to a constitution in some respects novel, a full, fair and unprejudiced trial.' Legislation was enacted for the management of the revenue and the establishment of various departments of government : public works, the post office, militia and defence, justice, customs, inland revenue, secretary of state, marine and fisheries, and for the organization of the civil service. A banking act and a railway act were passed. Provision was made for building the Intercolonial Railway, and resolutions were adopted for the admission of Rupert's

SIR GEORGES ETIENNE CARTIER

From the painting in the Chateau de Ramezay

Land and the North-West Territories into the Dominion. The indemnity of members was fixed at $600 for the session.

The first public accounts showed a revenue of $13,687,000, an expenditure of $13,486,000, and a net debt of $75,728,000. The exports of Canadian products were $45,543,177, of which $17,905,808 went to Great Britain, $22,387,846 to the United States, and $5,249,523 to other countries. Imports were $67,000,000, of which $37,600,000 came from the United States and $23,600,000 from Great Britain. It was the day of small things.

The session was held in two parts, one from November 7 to December 21, and the other from March 12 to May 22. The interval was for the purpose of allowing the provincial legislatures to be organized, and this necessity arose from the system of dual representation under which the same person might sit in the Dominion parliament and in a provincial legislature at the same time. John Sandfield Macdonald, the first prime minister of Ontario, was also a member of the Dominion parliament. Pierre Chauveau, the prime minister of Quebec, Blake, Cartier, Dunkin, Langevin and other members were in a similar dual position. The dual system was not abolished until several years after Confederation.

One of the leading members of this government and parliament was Georges Étienne Cartier. His public career began in storm. As a law student, twenty-three years of age, he took part in the Rebellion of 1837, and was compelled to flee to the United States and to remain there until an amnesty was proclaimed. In the struggle for responsible government from 1844 to 1848 he supported La Fontaine. He entered parliament in 1849, and in 1855 became a member of the Taché-Macdonald government. He was thus associated with Macdonald at about the time of the formation of the liberal-conservative coalition. In a few years he was the leader of the Lower Canada conservatives and Macdonald's chief ally. In 1855 Cartier was ranked as a liberal, and insisted that in joining hands with MacNab and Macdonald he was not giving up his liberal principles.

Cartier advocated with energy the construction of railways

and the deepening of the St Lawrence, and used the expression, 'Our policy is a policy of railways.' He was one of the Fathers of Confederation, and to him was chiefly due the support which the Province of Quebec gave to that measure. While Macdonald's preference was for legislative union, Cartier was a strong federalist and insisted upon the constitution taking that form. He frankly championed the special interests of Quebec, and tried to organize a solid vote from that province. Energy, audacity, and boundless optimism were his leading characteristics.

Alexander Tilloch Galt was a son of John Galt, the distinguished novelist, and one of the chief promoters of settlement in Western Ontario. Galt entered public life in 1849, was an opponent of Baldwin and La Fontaine, voted against the Rebellion Losses Bill, and signed the annexation manifesto. He was not a tory of the type of Sir Allan MacNab, but belonged rather to the class of Canadians referred to by Lord Durham, who declared that 'in order to remain English they would cease to be British,' that is, they would take up annexation with the United States as a refuge from French domination. He was always a staunch champion of the Protestant minority in Quebec. His annexation ideas were short-lived, and in 1858 he appears as an advocate of Confederation. His scheme was remarkably well thought out, and closely resembled that which was adopted several years afterwards. He was also, as minister of Finance of old Canada, the author of a protective tariff, and he stoutly and ably vindicated Canada's right to impose duties on British imports. He was one of the authors of Confederation, and at the various conferences acted as the chief representative of the Protestant minority of Quebec, and did his best to have their rights protected in the British North America Act. Although he was chosen as the first minister of Finance after Confederation, he remained only a few months in the government. His independence made him little amenable to party discipline. When he was knighted in 1869 he stipulated that the acceptance of the honour should not be regarded as a disavowal of his opinion that Canada should be an independent nation.

Alexander Mackenzie, like Macdonald and Brown, was of Scottish birth. He learned his trade of stone-cutting in Scotland, and in 1842, when he was twenty years of age, emigrated to Canada. Here he worked first as a journeyman, afterwards as a builder and contractor, and in a few years he was one of the leading citizens of Sarnia, where his business was carried on. He was the typical religious Scotsman, grave rather than emotional in his religion, having a strong sense of responsibility for the spending of every hour of his life, occupying his leisure in study. Soon he began to take part in public life as a reformer and a devoted follower of George Brown. His platform style was effective. It was said that he built a speech as he built a wall ; the sentences were compact, the points driven home with force, and often with sarcasm and dry humour. He carried into politics his habits of unflagging industry, and made himself master of every question with which he had to deal. His courage was unflinching.

Mackenzie had a deep distrust of coalitions. He advised Brown not to enter a government with Macdonald in 1864, and he was an uncompromising opponent of the combinations formed by Macdonald at Ottawa and at Toronto in 1867. Both were destroyed by his sledge-hammer blows and those of Edward Blake—a formidable combination Mackenzie was for a short time Provincial Treasurer of Ontario, and in the early seventies he was an aggressive leader of the opposition at Ottawa. He had neither the diplomatic skill of Macdonald nor the intellectual subtlety of Edward Blake ; simplicity, directness, force, courage, were the outstanding features of his character.

Edward Blake entered public life in 1867, when he was elected to the House of Commons for West Durham and to the Ontario legislature for South Bruce. In the legislature he became leader of the opposition against the Sandfield Macdonald government, was one of the chief instruments in its defeat, and was called upon to form a ministry. He held the premiership of Ontario for only about a year, and was succeeded by Oliver Mowat, who at Blake's suggestion resigned the vice-chancellorship of Ontario to re-enter public life. Blake then devoted his energy to federal politics and became

one of the most powerful assailants of the government, taking a leading part in the debates which culminated in the defeat of the administration on the Pacific Scandal question. Blake was the leader of the Equity bar of Ontario and a brilliant advocate. In intellectual force and range of thought he ranks perhaps first among the public men of Canada. His political triumphs in the early seventies were almost sensational. With the accession of the liberals to power in 1873 he showed a tendency to break away from party ties, and he was for some time regarded with hope by the Canada First or National party. The bent of his mind was towards constitutional questions, and he gave powerful aid to the Ontario government in its fight for provincial rights.

From Nova Scotia the most notable figures were Joseph Howe and Dr Charles Tupper. Howe was of the type which in the United States is called a favourite son. He sprang into fame some thirty years before Confederation as the champion of self-government for Nova Scotia, and from that time his position as chief tribune of the people was unassailed. He had the temperament of the popular orator and idol; he was eloquent and not afraid to use impassioned language; he was warm-hearted, free and familiar in his intercourse with the people. Confederation, which brought fame to some public men, was full of unhappy results for Howe. He opposed the movement, but it was too strong for him. His acceptance of an office in the Macdonald government was an unfortunate step, weakening his prestige and his hold on the friendship of Nova Scotia. After his death the old love and admiration resumed their sway, and his place as one of the heroes of Nova Scotia is safe.

To Dr Tupper, on the other hand, Confederation was a great opportunity. He brought Nova Scotia into the federal union by sheer force of will. He quickly adapted himself to the wider field, and became Sir John Macdonald's most powerful ally. His party loyalty was unswerving, and his force and aggressiveness were greater than those of his chief. After Confederation and the settlement of the Nova Scotia difficulty we do not find him assigned to any part worthy of his courage and energy until he became minister of Railways

and chief advocate of the bargain with the syndicate which built the Canadian Pacific Railway. With his stalwart frame, square jaw, deep, powerful voice, and strong rather than graceful oratory, he was the type of the fighter. He was of inestimable value to his party, ever ready to go anywhere and meet any opponent.

A tragic event of the first session was the murder of D'Arcy McGee. McGee was an Irishman who in early life had attached himself to the Young Ireland party, and had fled to America on account of his connection with Smith O'Brien's insurrection. After spending some years in the United States he went to Montreal, founded a newspaper there and entered the legislature in 1857. His opinions gradually underwent radical change, and from an enemy of Great Britain he became an ardent imperialist. He was attached first to the reform party, but afterwards formed a personal friendship and a political alliance with Sir John Macdonald. He was eloquent, witty and of a most kindly disposition. In 1865 he visited Ireland and spoke strongly against Fenianism, and to these speeches his assassination is attributed. On the morning of April 7, 1868, all Canada was horrified by the news that he had been assassinated at Ottawa while entering his lodgings after the adjournment of the House. His funeral at Montreal was attended by more than twenty thousand people. Patrick James Whelan was tried and found guilty of the murder and executed.[1]

In Nova Scotia a serious question was raised. The result of the general election of 1867 was an evidence of determined hostility to union with Canada. The same feeling was shown by the election for the legislature, in which only two out of thirty-eight members were for the union. The newly elected legislature passed an address to the queen, praying for the repeal of the union. The agitation was led by Joseph Howe, and he and three others were sent to England to press for repeal. The mission, however, was foredoomed to failure. The British government was determined that the federal union should be accomplished, and had done all in its power to promote the measure. The imperial parliament had

[1] Many hold that Whelan was not McGee's murderer.

passed the Confederation Act with a sigh of relief over the settlement of the troublesome Canadian question, and was resolved that it should not be reopened. John Bright's motion for a commission of inquiry was lost by two to one.

The decision of the imperial parliament did not end the agitation. Violent speeches against Confederation were made in the legislature of Nova Scotia. At length Macdonald resolved to win Howe over to the cause of union, hoping with his aid to quell the storm of opposition. Dr Tupper, the vigorous leader of the Confederation party in Nova Scotia, had accompanied Howe to England, holding a 'watching brief' for the government of Canada. Tupper sought out Howe, told him that he expected him to do all in his power to repeal the union, but that if he failed he would achieve nothing further by persistent antagonism. If Howe would go back to Nova Scotia and ask for a fair trial for the union, the government of Canada would make all reasonable concessions to Nova Scotia and would, as a guarantee of fair treatment, make Howe a minister. Howe showed a conciliatory spirit, and on his return to Canada entered into negotiations with Macdonald, and accepted the office of president of the Privy Council and afterwards of secretary of state for the Provinces.

Howe's position then became difficult and painful. He knew that after the decision of the British government, repeal was a lost cause. Nova Scotia could not fight the Empire, and annexation to the United States was an alternative abhorrent to a man of Howe's staunch British feeling. But it was hard for him to dissociate himself from his past as an advocate for repeal. Among the irreconcilables in Nova Scotia were many of his old admirers. His waning popularity, the cold, averted looks of old friends, were sources of keen pain to one who was intensely human and who loved to be loved by his fellow Nova Scotians. 'He might have yielded to destiny, but he should hardly have gone into the government,' is Goldwin Smith's summary. Keeping clear of this entangling alliance, he could have told his old friends frankly that further resistance was useless. The agitation would have died out. The federal members for Nova Scotia were becoming reconciled to the new conditions. The irreconcilable

members of the legislature could not have gone on for ever fulminating against Confederation. Their combativeness would have found vent in fighting for provincial rights. As an independent member of parliament, protesting against the methods by which Nova Scotia had been forced into the union, yet accepting the situation, Howe would have occupied a dignified position. By accepting office he became a minor minister instead of an unrivalled tribune of the people. He not only lost friends in Nova Scotia, but he became a target for the opposition at Ottawa, who were bitterly opposed to the coalition, and regarded all men of reform antecedents in the ministry as traitors to the party.

In 1869 the 'better terms' intended to placate Nova Scotia were enacted. They increased the debt of Nova Scotia to be assumed by the Dominion from $8,000,000 to $9,186,756, and otherwise improved the financial position of the province. These terms were strongly opposed by the liberals. They contended that the British North America Act settled the financial relations of Canada and the provinces, that parliament had no right to change the basis of union; that if parliament could increase a provincial subsidy it could reduce one; that it might alter any other part of the Confederation Act and destroy Confederation itself. Macdonald justified the legislation simply on the ground of necessity, as the only means of saving Confederation.

Prince Edward Island still held aloof, and it was not until July 1, 1873, that the consolidation of Eastern Canada was completed by the entrance of the island province into the federal union.

III

THE INTERCOLONIAL RAILWAY

BETWEEN the more thickly settled parts of Quebec and of the Maritime Provinces there was a long stretch of sparsely settled country which had to be traversed by a railway if the union were to be complete.

The Intercolonial Railway was a project conceived long before Confederation. During the Rebellion of 1837 attention

was drawn to the need of a military highway between Halifax and Quebec. In 1848 Canada, Nova Scotia and New Brunswick had surveys made by Major Robinson and other imperial officers. Major Robinson reported on several possible lines from Halifax to Quebec giving preference on military grounds to the longest and most costly route farthest from the frontier of the United States. The colonies objected that this line would pass through a country little settled, and would not pay. The British government admitted the justice of this objection and offered a guarantee of the interest on the bonds on condition that the line was built wholly within British territory. This arrangement fell through on account of a disagreement as to the extension of the guarantee to a railway from New Brunswick to the United States. Military considerations and commercial necessities were continually coming into conflict. Portions of the railway, afterwards forming parts of the Intercolonial, were built between 1853 and 1867. In 1867 the success of the project was assured by making it a part of the scheme of Confederation. The resolutions adopted by the conference of provincial delegates in London in 1866 provided for the immediate construction of the railway by the government of Canada. The imperial government was to guarantee a loan of £3,000,000. The Confederation Act provided that the railway should be commenced six months after the union.

When, in the first session of the new parliament, the bill providing for the construction of the railway was introduced, the controversy as to the route was renewed. Antoine Aimé Dorion, a leading French-Canadian liberal, asked that the route should not be determined without the consent of parliament. The ministry objected that this would imperil the imperial guarantee, which was conditional on the approval of the route by the secretary of state for the Colonies.

The northern or Robinson route by the Chaleur Bay was preferred by the imperial government for military reasons, and it was also strongly supported by the Hon. Peter Mitchell of New Brunswick, and by Sir Georges Cartier and his Quebec following. The majority of the ministry were for the more direct line from Rivière du Loup to St John. Cartier, by

absenting himself from cabinet meetings, practically threatened to resign unless his favourite route were accepted. Macdonald called in Sandford Fleming, an eminent engineer, who saved the situation by deciding for the northern route on both military and commercial grounds.

IV

EXPANSION WESTWARD

Annexing the Great West

THE union with Canada of the region lying between the Great Lakes and the Rocky Mountains had been advocated many years before Confederation. But a fresh impulse was given to the movement by the political reconstruction which freed Canada from political paralysis and endowed her with a more flexible instrument of government and with ampler resources. The British North America Act provided means for the admission into the union of Rupert's Land and the North-West Territory, and in the first session of the new parliament resolutions were adopted asking that the power should be exercised. In view of the difficulty which afterwards arose, it should be noted that these resolutions evinced an inclination to deal fairly with the people of the West. They were to have political institutions bearing analogy, as far as circumstances would admit, to those which existed in the provinces of the Dominion. Similar good intentions were shown in the agreement with the Hudson's Bay Company, which provided that the rights of Indians and half-breeds should be respected, and in the instructions given by Howe as secretary of state to William M^{c}Dougall, when the latter was appointed lieutenant-governor of the new country. Unhappily these good intentions were not soon enough conveyed to the little community dwelling by the Red River. When Adams G. Archibald, afterwards lieutenant-governor of Manitoba, was a member of parliament, he described that community as secluded from the rest of the world, uninformed of what was happening around it, and alarmed by the sudden bursting of the barrier which separated

it from the rest of the world and by the entrance of strangers. 'Is it any wonder,' he asked, 'that these fears should be raised, should be traded upon by demagogues ambitious of power and place?' By a series of misfortunes, blunders and accidents the inhabitants were kept in ignorance of the real intentions of Canada.

The extinction of the legal title of the Hudson's Bay Company to the western lands was comparatively simple and easy. By agreement between the company, the imperial government and the Canadian government, it was arranged that Canada should pay the company £300,000 for the transfer of the country, and the extinction of the company's exclusive trading, fishing and other privileges. At the same time the company retained the land immediately around the trading posts and two sections in every township. The land thus reserved amounted to about one-twentieth of the newly acquired territory.

The prime mistake was that while these negotiations were being carried on with the company in England, no one was treating with the inhabitants of the country. Their consent to the momentous change was taken for granted. Again, an act for the temporary government of the country, passed by the parliament of Canada in 1869, was criticized because it did not recognize the political rights of the people and their right to a voice in the formation of the government. That this charge was well founded was afterwards admitted by William McDougall, one of the chief actors in the drama.

On the banks of the Red River, in what is now the Province of Manitoba, dwelt some twelve thousand settlers, ten thousand of whom were half-breeds or Métis, partly of Indian and partly of Scottish or French blood. They had been living under the government of the Hudson's Bay Company. The governing body was called the Council of Assiniboia. Its head was the governor of the company—at this time William McTavish. The people subsisted by fishing, hunting and a little farming. Their farms ran back from the river in long strips, such as may now be seen in the Province of Quebec. Fort Garry, the site of the present city of Winnipeg, was the centre of government.

Red River Insurrection

By a series of errors and misfortunes the settlement drifted into anarchy. The authority of the Hudson's Bay Company was passing away, that of Canada was not yet established. Canada had itself only recently emerged from the condition of a group of weak and distracted provinces. One of the sayings that touched the heart of the Red River Settlement was that it would not submit to be 'the colony of a colony.' Before attempting to take possession, there should have been a conference between representatives of Canada and representatives of the Red River Settlement. Unfortunately the inhabitants derived their first impressions of the new order from surveying parties and from newcomers spying out the land.

'A knowledge of the true state of the case and of the advantage they would derive from union with Canada had been carefully kept from them, and they were told to judge of Canada generally by the acts and bearing of some of the unreflective immigrants who had denounced them as cumberers of the ground, who must speedily make way for the superior race about to pour in upon them.' So wrote Donald A. Smith (afterwards Lord Strathcona) in reporting upon the mission to the Red River which he undertook in January 1870. He added that in various localities adventurers had marked off for themselves large and valuable tracts of land, impressing the existing inhabitants with the belief that they were about to be supplanted by the stranger. The settlers were fearful and perplexed, and, lacking other guidance and control, they fell under the influence of Louis Riel, a man of considerable ability and education, but vain, ambitious, and ill-balanced. He was the son of a half-breed miller who had some years before headed a successful revolt against the Hudson's Bay Company.

Several unfortunate circumstances tended to aid Riel's ascendancy. The local officers of the Hudson's Bay Company, who worked under a profit-sharing arrangement, were dissatisfied because they believed they would be defrauded

out of their share of the £300,000 paid for the extinction of the company's rights, and would be turned adrift without compensation. Governor M^c^Tavish was ill and nearing his end. Bishop (afterwards Archbishop) Taché, who was a trusted spiritual leader of the people, was absent in Rome.

Joseph Howe, who was in the country in the early part of October 1869, when surveying operations were stopped by Riel, was in some ways qualified to act a conciliatory part. He was afterwards accused of disloyalty to Canada and of intriguing against M^c^Dougall. What seems more probable is that he failed to perceive the gravity of the situation. He thought he saw in the Red River Settlement a struggle for self-government, such as he had witnessed in Nova Scotia, and he naturally took the side of the inhabitants. He did not see the danger of anarchy, dictatorship and violence lurking in the situation; hence his failure to convey any warning of serious trouble to William M^c^Dougall, who had been appointed lieutenant-governor.

While Howe was in the settlement Riel called upon Colonel John Stoughton Dennis, who was in charge of the federal survey, and asked him to explain the meaning of his operations. He was assured that no injustice was intended, and he went away apparently satisfied. But a few days afterwards Riel forbade the surveyors to continue their work, organized the Métis and forced M^c^Dougall across the American border to Pembina. On November 1 he marched in through the open gates of Fort Garry, billeted his followers on the inhabitants, and armed them with the rifles stored in the fort. To the Hudson's Bay official who remonstrated somewhat feebly against this step, he explained that he had come to guard the fort against 'a danger.' Riel was now master of the situation.

Reports of hostile movements on the part of the Métis had been conveyed to M^c^Dougall at several points on his way from St Paul to Pembina. At Pembina, close to the Canadian border, he was met by a half-breed who served him with a formal notice not to enter the territory. M^c^Dougall pushed on to the Hudson's Bay post, two miles from Pembina, and within the Red River territory. There he learned of the

stoppage of the surveys by Riel and of his determination to resist the entry of the federal officials into the territory. On November 2 a party of fourteen men approached the post and ordered M^c^Dougall to leave, and the following morning they became so menacing that he thought it prudent to return to Pembina. There he remained for several weeks.

When the news of the check received by M^c^Dougall reached Ottawa, Sir John Macdonald determined not to accept from the Hudson's Bay Company the territory in its disturbed state, held back the payment of the money due to the company, notified the British authorities of what he proposed, and warned M^c^Dougall not to try to force his way into the country, nor to assume the functions of government prematurely. Such an assumption, he said, would put an end to the authority of the Hudson's Bay Company. Then, if M^c^Dougall were not admitted, there would be no legal government, and anarchy must follow. In such a case, no matter how the anarchy was produced, it would be open by the law of nations for the inhabitants to form a government *ex necessitate*. The warning was given too late. The letter was written nearly a month after Riel was in possession of Fort Garry and only a few days before December 1, when M^c^Dougall supposed that the transfer would take effect. On that day, assuming that it had been made, he issued a proclamation in which he announced his appointment as lieutenant-governor, and he also issued a commission to Colonel Dennis as Conservator of the Peace, with power to raise armed forces and to attack those who resisted his authority. M^c^Dougall hopelessly failed to make his authority felt, and in despair returned to Canada. He has been harshly criticized, but while his proclamation of December 1 was hasty and ill-judged, it was not the cause of the difficulty. The mischief had already been done. The authority of the Hudson's Bay Company had been destroyed and the authority of Riel established, when Riel seized Fort Garry, a month before M^c^Dougall took action.

Riel and his friends, soon after taking possession of the fort, styled themselves 'the President and Representatives of the French-speaking population of Rupert's Land in council,'

and summoned the population to elect representatives to the council. The English-speaking inhabitants were well inclined towards Canada, but they were extremely anxious to live on good terms with their French-Canadian neighbours, and they lacked organization and leadership. They decided, after some hesitation, to send delegates to the meeting called by Riel. Riel and his party now acted still more boldly, seized the books and records of the council of Assiniboia, and declared the intention of the French members to form a provisional government. On December 1 a bill of rights was adopted. It asserted the right to elect a legislature; provided for a free homestead and election law; for appropriation of land for schools, roads, bridges and parish buildings; for a railway connecting Winnipeg with the nearest existing railway; for the use of the French and English languages in the courts and the legislature; for the protection of existing privileges, customs and usages, and for full representation in the Dominion parliament. The demands on the whole were not unreasonable, and furnished at least a fair basis for negotiation. The bill of rights was a counterblast to McDougall's proclamation, copies of which were posted up in Winnipeg, but were promptly torn down. Resistance was offered to Riel by a party of Canadians under Dr John C. Schultz, who had come from Ontario to Fort Garry in 1860, had practised his profession as physician, and had become a leader among the newcomers. Fifty men assembled at Dr Schultz's house to protect the property of the Canadian government stored there. They were besieged by Riel with a force of three hundred men. On the sixth day of the siege they resolved to attempt to cut their way out. Emissaries came from Riel with a flag of truce, and assured them that if they would march up to Fort Garry they would be disarmed and allowed to go where they pleased. On this assurance they surrendered and marched to Fort Garry, where, instead of being liberated, they were imprisoned.

A proclamation was now issued which was virtually a declaration of independence. The flag of the provisional government was raised in place of the Hudson's Bay Company's flag. Riel assumed the presidency. Efforts were

made to induce the Indians to join the movement, but in vain. This fact is ascribed to McDougall's foresight in appointing Joseph Monkman, an English half-breed of great influence among the tribes, to visit their camps, explain the position, and urge them to remain loyal to the queen. Credit must also be given to the traditional British policy of fair dealing with the Indians, and to the Hudson's Bay Company. While the company did not gain lustre in the period of the transfer, it had been the means of keeping the country British for two centuries, and paved the way for the union with Canada.

Donald Smith's Mission

The next step in the history is the visit of three commissioners from the Canadian government: Vicar-General Thibault, Colonel de Salaberry and Donald A. Smith, an old and experienced officer of the Hudson's Bay Company. Smith arrived on the scene about the end of December. He described the situation in these words:

> The state of affairs at this time in and around Fort Garry was truly humiliating. Upwards of sixty British subjects were held in close confinement as political prisoners. Security for persons or property there was none. The Fort, with its large supplies of ammunition, provisions and stores of all kinds, was in the possession of a few hundred French half-breeds, whose leaders had declared their determination to use every effort for the purpose of annexing the territory to the United States; and the governor and council of Assiniboia were powerless to enforce the law.

Forty delegates appointed at a meeting of the inhabitants held a conference with the Canadian commissioners which lasted from January 25 to February 11. Smith gave assurances that on entering Confederation the Red River people would be secured in all the rights of British subjects. A new bill of rights was prepared, and Smith answered each demand in a manner that seemed to satisfy the convention. An armed guard stood over him while he wrote. John Black, the Rev. Father Richot and Alfred H. Scott were appointed as delegates to convey the views of the inhabitants to the

Canadian government at Ottawa. Riel released some of his prisoners and promised the release of all.

It was Donald Smith's belief that by his policy he was steadily undermining Riel's influence, and winning over the inhabitants to Canada. He therefore disapproved of Dr Schultz's proposal to organize a rescue party, holding that it would tend to unify Riel's followers and restore his influence. Schultz raised a force of six hundred men and succeeded in obtaining from Riel a promise to release the prisoners. The force was then dispersed under the advice of Smith and others. A small part of the force returning home to Portage la Prairie was captured by two of Riel's lieutenants, William B. O'Donoghue and Ambroise Lepine. Among the captives was Major Boulton. Riel demanded his execution and was with difficulty dissuaded from this course. Riel said that Canadians had laughed at and despised the French half-breeds, believing that they would not dare to take the life of any one, and that an example must be made. He at length granted Boulton's life, and as a measure of peace Smith induced the English residents to go on with the election of delegates to a council summoned by Riel.

The Scott Tragedy

Up to this time nothing had been done which might not have been forgiven. The resistance of the Métis was in a measure justified. On the other hand, Riel and his associate leaders must have been convinced by the explanations of Donald A. Smith and by the documents he produced that the people were to be dealt with justly and as free men, entitled to full political rights. But Riel, instead of being pacified, seems to have been exasperated as he saw his power passing away. The tragedy of the insurrection was the death of Thomas Scott, a young Canadian who had taken part in the defence of Schultz's house, had been captured, and, though he had escaped, had again been made prisoner with Major Boulton's party. On March 3 Scott was tried by a court-martial, on a charge of having rebelled against the provisional government and of having struck a captain of the guard.

No written accusation was presented to the prisoner. The evidence was taken in French, a language which Scott did not understand. Scott was not present during his own trial, but, after the evidence had been taken, he was brought before the council and the substance of the evidence was explained to him by Riel. Scott was not asked if he had any witnesses. The council then voted for his death. The whole of the proceedings occupied less than three hours.

Smith reminded Riel that the one great merit claimed for this insurrection was that it had been almost bloodless, and implored him not to stain it with a horrible crime. Riel exclaimed, 'We must make Canada respect us.' He refused to change his determination or even to delay the death of his victim. Scott was shot at noon by a firing party of six, saying aloud with his last breath, 'This is a cold-blooded murder.' A request for Christian burial for the body was refused.

The defence for this act which is made by the friends of Riel is that responsibility for the death of Scott lies with a *de facto* government, and that the act was a judicial execution by a duly constituted authority. The contention is that the authority of the Hudson's Bay Company had been destroyed by McDougall's proclamation. In a state paper written by Lord Dufferin it is said that

> when the proposal to constitute a provisional government was mooted in the Convention [of the inhabitants] a certain portion of the English deputies declined to take part in the proceedings until they had ascertained whether or no Governor McTavish, the legal ruler of the Territory, still considered himself vested with authority. A deputation accordingly was appointed to wait upon him in his sick chamber—for this gentleman had unfortunately during many previous weeks been suffering from the mortal disease of which he soon after died. In reply to their inquiries Governor McTavish told them that he considered his jurisdiction had been abolished by the proclamation of Mr Macdougall, that he was 'a dead man,' and that they had better construct a Government of their own. Returning to their colleagues, the deputation announced to the convention what Governor

> McTavish had said, and as a result Riel and his colleagues were nominated to their respective offices.

It has been seen that Sir John Macdonald to a certain extent foresaw this situation. He had written to McDougall :

> An assumption by the Government by you of course puts an end to that of the H. B. Company's authorities, and Governor McTavish and his council would be deprived even of the semblance of legal right to interfere. There would then be, if you were not admitted into the country, no legal government existing, and anarchy must follow. In such a case, no matter how the anarchy is produced, it is quite open by the law of nations to form a government *ex necessitate* for the protection of life and property.

There is therefore little doubt that the inhabitants were entitled to form a provisional government. But that would not justify the slaying of Scott. Such a government would surely be bound to act with moderation and humanity, and to kill a man for insubordination, for violent language, or even for striking a guard, was to inflict a penalty so outrageously out of proportion to the offence that it must be regarded, not as an execution, but as a crime. The fact that the provisional government was then actually in negotiation with representatives of the Dominion government destroys any plea of urgent necessity that might have been advanced. It was a crime, and it was also from the point of view of Riel's personal interests a huge political blunder. But for it he might have played an important part in the public life of the new province.

Bishop Taché as Peacemaker

Bishop Taché had, at the request of the Dominion ministers, sailed from Rome with the object of proceeding to the West and quieting the Red River settlers. Arriving at Fort Garry four days after the execution of Scott, he at once set himself to restore order in the settlement. He met Riel's legislature and asked for the release of the prisoners, a request which was eventually granted. Bishop Taché either assumed

INTERIOR OF OLD FORT GARRY

From the drawing by H. A. Strong

that he had the right to promise an amnesty for the slaying of Scott, or he decided to force the government's hand by making such a promise. He informed Howe, the secretary of state, that he had promised a complete and entire amnesty, and added, 'Should my view unfortunately have deviated from the real tendency of the government, I humbly beg that my promise will be considered sacred.' The action of Bishop Taché was afterwards cited as one of the reasons for pardoning Riel.

The Hudson's Bay Company resumed operations. The flag of the provisional government was hauled down and the Union Jack was substituted. Order was restored. Riel's legislature, after hearing the explanation from Father Richot, one of the delegates to Ottawa, passed the following resolution: 'That the Legislative Assembly of the country do now in the name of the people accept the Manitoba Act and decide on entering the Dominion of Canada on the terms proposed in the Manitoba Act.' Riel, however, still kept an armed guard at the fort until the arrival from Canada of the Red River expedition under Colonel Garnet Wolseley.

In the late spring and early summer of 1870 the settlement was at peace. The Hudson's Bay Company had resumed its business operations, but apparently not its government. Riel and the legislature retained office, but with the understanding that the authority of the Dominion government should be recognized. There was uneasiness among the leaders as to the amnesty, and some talk of resisting the troops if the amnesty should be refused.

The Wolseley Expedition

News of the execution of Scott reached Ottawa on April 4. Hillyard Cameron, member for Peel, Ontario, a prominent lawyer, a conservative and Orangeman, expressed the hope that the government would not treat with the delegates sent by Riel to Ottawa—Black, Richot and Scott, 'men whose hands were red with the blood of an unoffending fellow-citizen.' A fierce agitation arose in Ontario. The Toronto *Telegraph*, voicing the opinion of the newly organized Canada

First party,[1] asked whether 'the messengers of the Murderer' were to be received. A meeting of eight thousand people in Toronto passed resolutions condemning the proposal to treat with the delegates.

Richot and Scott were arrested, but all attempts to take criminal proceedings against them failed, and they were treated by the Canadian government as the authorized representatives of the people of the North-West. Richot and Scott afterwards claimed that at these interviews an amnesty was promised to Riel, but this was denied by Macdonald and Cartier. The government took the ground that they had no power to grant an amnesty, or to deal with the crime at all, because it had been committed in a territory which was not then part of Canada.

At Ottawa the government had decided to form a new province of Manitoba with a liberal measure of self-government, and at the same time to assert the authority of the Dominion by the dispatch of a military force. It was explained that the expedition would be sent in no hostile spirit, but to establish law, peace and order. The force would be composed of one-fourth of regular British troops and three-fourths of Canadian militiamen, and the expense would be borne by Great Britain and Canada in the same proportion.

Some of the Quebec members of parliament objected to the expedition as conveying a menace to the people of the Red River territory. But a resolution declaring that the duty of restoring order and the authority of the crown rested with the imperial government received only thirteen votes. Dorion, a leading Quebec liberal, feared that the expedition would destroy the conciliatory effect of the Manitoba Act, but Alexander Mackenzie, leader of the opposition, made a ringing speech in favour of the expedition, declaring that Canada must assert its authority first and redress grievances afterwards. Later on, in order to conciliate French-Canadian feeling by avoiding the appearance of force, an attempt was made to have A. G. Archibald, the lieutenant-governor of Manitoba who succeeded M^c^Dougall, and Bishop Taché, proceed to the country through United States territory so as

[1] See p. 37.

to arrive there in advance of the expedition. This was strongly opposed by the Canada First party as a concession to Riel, and the project was abandoned. Archibald took his way over the 'snow road' in the rear of the military expedition.

While the expedition met with no resistance, it was remarkable as a triumph over natural difficulties. The country between Fort William and Red River was a wilderness, abounding in lakes and rivers and hitherto traversed only by Indians and traders in their bark canoes. On August 24 the troops arrived at Fort Garry, only to find that Riel had decamped. Lieutenant-Governor Archibald arrived on September 2. In January 1871 the first government was formed and the first legislature elected, and constitutional government may be said to have begun. The province was, however, disturbed for some time. There was much ill-feeling between the Métis and the volunteers, and in September 1871 a Fenian raid from the United States was threatened. The leader was O'Donoghue, who had been associated with Riel in the insurrection. He afterwards denied that a Fenian invasion was contemplated, and said that his movement was a continuation of the insurrection of 1869 and was authorized by Riel. Lieutenant-Governor Archibald, being alone, cut off from the central authority and thrown upon his own resources, decided to appeal to Riel, Lepine and the Métis. To use the language of his own report, he reviewed the troops collected under Riel, accepted their services, promised them at least a temporary immunity on account of the crimes connected with the insurrection, and convinced himself that their loyalty was genuine and that it contributed to the safety of the province. 'If the Dominion had at this moment a Province to defend and not one to conquer, they owe it to the policy of forbearance.'

The Fenian raid was a fiasco, but its political consequences were of some importance, for the aid said to have been rendered by Riel to Archibald was one of the grounds afterwards put forward for an amnesty to all those concerned in the death of Scott, and was the ground upon which Lord Dufferin acted in commuting the sentence of death afterwards passed upon Lepine, one of Riel's chief supporters.

The Amnesty

It was long before the Riel question disappeared from Canadian politics. In 1871, on the eve of the general election in Ontario, the legislature, at the instance of Edward Blake, adopted a resolution denouncing the cold-blooded murder of Thomas Scott for his outspoken loyalty to the queen, and declaring that the murderers should be brought to justice. In January 1872, after Blake had become prime minister of Ontario, the legislature offered a reward of $5000 for the apprehension of Riel. Sir John Macdonald wrote to Archbishop Taché enclosing him a draft for $1000 to be paid to Riel in order to enable him to leave the country. Donald Smith afterwards advanced £600, which Archbishop Taché divided between Riel and Lepine. Macdonald's action in aiding Riel to escape while he protested his desire to catch him was severely criticized. He contended, however, that the safety of the country could be assured only by keeping Riel away.

In the general election of 1874 Riel was elected for the Manitoba constituency of Provencher. He went to Ottawa, signed the roll of members and took the oath. A warrant for his arrest was issued but not executed. Riel was summoned to appear before parliament. As he failed to do so he was expelled. Five months after his expulsion Riel was again returned for Provencher. On February 15, 1875, Alexander Mackenzie, the prime minister of Canada, laid before parliament the sentence of outlawry passed upon Riel by Chief Justice Wood of Manitoba, and on February 24 asked the house to declare that Riel had been adjudged an outlaw for felony. The motion was carried and the seat vacated, and Riel made no further attempt to enter parliament.

In 1875 Mackenzie asked parliament to grant an amnesty to all persons concerned in the rebellion except Riel, Lepine and O'Donoghue. He proposed that Riel and Lepine should be banished for five years, but suggested no measure of clemency for O'Donoghue. A motion for unconditional amnesty was rejected, as was a motion that the amnesty be extended to O'Donoghue.

Lepine had been sentenced to death by Chief Justice Wood of Manitoba, but Lord Dufferin commuted the sentence to two years' imprisonment and permanent forfeiture of political rights. Lord Dufferin acted under the royal instructions which gave the governor-general power to dispense with the advice of his ministers under special circumstances, and to exercise the prerogative of the crown according to his independent judgment. In a state paper dealing with the matter he considered five pleas for amnesty : (1) That Archbishop Taché went to Manitoba as a plenipotentiary authorized by the British and Canadian governments. (2) That an amnesty was promised to Judge Black, Richot and Scott, the delegates sent by the Red River settlers to Ottawa. (3) That those who killed Scott represented a *de facto* government. (4) That Riel had been paid to leave the country ; and (5) That Governor Archibald had availed himself of the assistance of Riel, Lepine and others in preventing the Fenian invasion, threatened in 1871. He disallowed all the pleas but the last. Concerning that he said :

> After the governor of a province has put arms into the hands of a subject and has invited him to risk his life, with a full knowledge at the time that the individual in question was amenable to the law for crimes previously committed, the executive is no longer in a position to pursue the person thus dealt with as a felon. The acceptance of the service might be held, I imagine, to bar the prosecution of the offender ; for undesirable as it may be that a great criminal should go unpunished, it would be still more pernicious that the government of the country should show a want of fidelity to its engagements, or exhibit a narrow spirit in its interpretation of them.

V

THE WASHINGTON TREATY

THE year 1870 marks the beginning of an important period in the history of the relations of Canada with the United States. The question of the fisheries had been unsettled since the treaty of 1783, giving the fishermen of the United States certain fishing rights on the shores of

Newfoundland and other portions of British North America. The point was raised whether these privileges were cancelled by the war of 1812-14. The contention of the United States was that the treaty of 1783 was perpetual as to fishing privileges, just as it was perpetual as to independence. The British enforced their claims under protest from the United States until 1818, when a convention was made between the two countries by which the American fishermen were allowed to share in the inshore fisheries on certain British coasts and were excluded from others.

By the abrogation of the Elgin Treaty in 1866 the parties were thrown back to the convention of 1818. To prevent friction it was then agreed that annual licences should be issued to fishermen of the United States on payment of a nominal fee. At first a considerable number of licences were taken out, but when the fee was increased in 1868 there was much fishing without licence. On January 8, 1870, the Canadian government abolished the licence system and sent out a fleet of cruisers to protect the fisheries. Seizures of American vessels were made and there was much irritation. President Grant in his annual message to Congress in 1870 severely criticized the action of the Canadian government. There were other causes of friction. Canada had a claim on the United States arising out of the Fenian raids. At the same time the United States claimed damages against Great Britain for the loss to American shipping caused by the escape of the *Alabama*.

In his speech defending the Washington Treaty, in 1872, Sir John Macdonald said that as long as the *Alabama* question remained open Great Britain was seriously weakened in dealing with other European powers. He feared that the *Alabama* question might be pressed just when Great Britain was engaged in mortal combat with some other nation. The Johnson-Clarendon Treaty, intended to settle this dispute, had been rejected by the senate of the United States ; Great Britain could not with self-respect have reopened the question of the *Alabama*. Sir John Macdonald said that the fishery question was regarded by Great Britain as furnishing an opportunity for indirectly reopening the *Alabama* question.

'The invitation was made by the British Ambassador to consider the fishery question. The United States—by a quiet and friendly understanding between the two powers—replied, acceding to the request, on condition that the larger and graver matters of dispute were also made a matter of negotiation.'

In 1870 the Hon. Alexander Campbell, postmaster-general, was sent to England to consult the imperial government concerning the proposed withdrawal of troops from Canada, the question of fortifications, the invasions of Canadian territory by citizens of the United States, the systematic trespasses on the Canadian fishing grounds by United States fishermen, and the unsettled question as to the limits within which foreigners could fish under the treaty of 1818. The British government suggested the appointment of a joint high commission to discuss questions which had arisen out of the fisheries, as well as all those which affected the relations of the United States towards Canada.

In the American reply the opinion was expressed that a settlement of the *Alabama* claims would also be essential to the restoration of cordial relations. To this proposal the British government agreed, 'provided that all other claims both of British subjects and citizens of the United States arising out of acts committed during the recent civil war in that country, are similarly referred to this commission.'

Both sides then named their plenipotentiaries as follows:

Great Britain

Earl de Grey and Ripon, president of the Privy Council.
Sir Stafford Northcote, M.P.
Sir Edward Thornton, British minister at Washington.
Sir John A. Macdonald, prime minister of Canada.
Mountague Bernard, professor of international law at Oxford.

United States

Hamilton Fish, secretary of state.
R. C. Schenk, minister to Great Britain.

Judge Samuel Nelson of the Supreme Court of the United States.
E. R. Hoar of Massachusetts.
George H. Williams of Oregon.

Macdonald accepted a place on the commission with misgivings. The original proposal was that there should be three members on each side. The increase to five weakened his position, but on the advice of his colleagues he adhered to his acceptance. Still he wrote to Sir John Rose : ' If anything goes wrong I shall be made the scapegoat, at least so far as Canada is concerned.' He felt himself in a delicate position, having to steer between the danger of neglecting the special interests of Canada and the danger of taking a view too exclusively Canadian, regardless of general imperial interests.

Canada at this time was eager for reciprocity in trade with the United States, and in exchange for limited reciprocity would have made concessions in regard to the fisheries. To this the Americans were opposed, preferring to give a money equivalent for the fisheries. Macdonald told Lord de Grey it would be out of the question for Canada to surrender her fisheries for all time for any cash compensation. He regarded the value of the catch as less important than the leverage which the fisheries gave for improving the position of Canada as a maritime power.

Early in the negotiations Macdonald took the precaution of instructing his government to cable the Colonial Office that Canada considered the inshore fisheries as her property, which could not be sold without her consent. The Colonial Office assented, but finally gave instructions to proceed subject to ratification by the parliament of Canada. Macdonald was embarrassed by this instruction. If overruled by his colleagues in the commission he must either protest and withdraw, thus disclosing a conflict between Canada and Great Britain, or remain and be attacked for sacrificing Canada's rights ; or possibly be compelled to vote against the treaty in the Canadian parliament.

The Canadians expected that their claim for compensation for the Fenian raids would be brought before the commission.

It was contended that Canada's case on this account was clearer than the *Alabama* case ; that the escape of the *Alabama* was due to a momentary lapse of vigilance ; while the preparations for the Fenian raids were open and extended over a long period of time. But when the commission met, it was found that these claims had not been included in the terms of reference. The Gladstone government decided not to press the point ; but they admitted its justice and suggested a money compensation to Canada. Sir John Macdonald dissented, and on his suggestion it was agreed that Great Britain should guarantee a loan for Canadian works of defence. The San Juan dispute was also eliminated from the negotiations by a reference to the award of the German Emperor.[1] This dispute arose out of the Oregon Treaty of 1846. The question was whether the Island of San Juan between Vancouver Island and the mainland was British or American territory.

The Americans rejected a British proposal for full reciprocity in return for the use of the fisheries. An American offer of one million dollars for the fisheries in perpetuity, and a British proposition for free fish, salt, lumber, coal, and reciprocity in the coasting trade were also rejected. The British commissioners next proposed to concede the right to fish inshore for a term of years in exchange for the admission of coal, salt, lumber and fish into the United States. Against this Macdonald formally protested. He said that the proposed consideration for the fisheries was not adequate. The arrangement would be highly distasteful to Canada and hard to justify in the Canadian parliament. Earl de Grey, to whom this protest was addressed, said that it would compel him to inform the United States commissioners that the negotiations were at an end. Macdonald, unwilling to make Canada responsible for the failure of the negotiations, consented to modify his expression as to the probable action of the Canadian parliament.

The attitude of the British commissioners caused Sir John to say in a letter : ' I must say that I am greatly disappointed at the course taken by the British Commissioners.

[1] See ' Boundary Disputes and Treaties ' in this section.

They seem to have only one thing on their minds, that is, to go home to England, with a treaty in their pockets, settling everything no matter at what cost to Canada.'

Earl de Grey having decided that the time had come to communicate his position to the home government, Macdonald went on record thus :

> Sir John Macdonald objects to any arrangement based on a moneyed consideration only, or with free fish added, and adheres to the proposition that Canadian coal, salt, fish and lumber should be admitted into the United States, to be supplemented by a money payment. If this cannot be obtained, he would desire that an arrangement should be made as to the headland question, and as to the admission of American vessels into Canadian ports for trading purposes, leaving Canada in possession of the inshore fisheries.

He protested against the mingling of various international questions as prejudicial to Canada. Canada was asked to make sacrifices upon some points in order to procure a settlement of other questions in which England was more vitally interested. The right to the inshore fisheries was not a point of difference between the United States and Canada. Canada's right was undisputed. The Americans, he said, were simply attempting to bully her into a surrender of her rights by speaking of possible collisions and bloodshed. If it appeared that England was afraid or unwilling to protect Canada, annexation sentiment would be strengthened.

In April Macdonald wrote to his colleague Dr Tupper, advising him that the commission had agreed to a settlement of the inshore fisheries on terms of free trade in fish and a money compensation to be fixed by arbitration.[1]

As finally settled and signed on May 8, 1871, the treaty provided :

That the settlement of the Alabama claims should be left to a Board of Arbitration, to meet at Geneva.

That the Canadian fisheries were to be opened to the Americans for at least twelve years ; the question of money compensation to Canada to be left to a commission to meet at Halifax.

[1] See 'The Fishery Arbitrations' in this section.

That the Americans should have free navigation of the St Lawrence in perpetuity and the canals for a similar period.

That salt-water fish and fish oil should be admitted into the United States free of duty for a similar period.

That Canada should have the right of free navigation of Lake Michigan, and of the rivers Yukon, Stikeen and Porcupine on the Pacific coast.

That Canadians should have the right to transport goods in bond through the United States, and that Americans should have the same right in Canada.

That the settlement of the San Juan boundary should be left to the German Emperor.

Macdonald contemplated the possibility of the Canadian parliament rejecting the treaty, and he advised the British government to get the decision in the *Alabama* case promptly before the Canadian parliament met, so that the *Alabama* settlement would not be prejudiced by the rejection of the fishery articles.

But when parliament met he had decided that it was his duty to accept the treaty. He said : ' I believe that the sober second thought of this country accords with the sober second thought of the government, and we come here and ask the people of Canada through their representatives to accept this treaty ; to accept it with all its imperfections, to accept it for the sake of peace, and for the sake of the great Empire of which we form a part.'

The two houses of the New Brunswick legislature passed resolutions condemning the treaty. But it was on the whole favourably received by the Nova Scotia fishermen. It was highly unpopular in Ontario, a sentiment which was due partly to failure to press for compensation for the Fenian raids.

The result of the arbitration as to the cost of fisheries was unexpectedly favourable to Canada. The arbitrators in 1877 awarded Canada $5,500,000 for the excess in value of the Canadian over the American fisheries. The American commissioner dissented with emphasis, and was strongly supported in the press and in Congress, but the sum was paid. The Geneva Arbitration in 1872 awarded $15,500,000 to the

United States for the *Alabama* losses. The German Emperor in the same year decided that the Island of San Juan belonged to the United States.

VI

FALL OF THE MACDONALD GOVERNMENT

IN the period between 1867 and 1872 much of the work of laying the foundations of the new nationality was done. By the inclusion of British Columbia the boundaries of Canada were extended to the Pacific coast. Provision was made for communication from ocean to ocean. A federal government and parliament were organized and set in motion, and provincial legislatures and governments were formed. The difficulties that arose in Nova Scotia and the Red River territory were incidents of the new responsibilities that the young Confederation had assumed. At Washington a Canadian statesman is found dealing with an important question of external relations, and having to reconcile Canadian with imperial interests; to consider the position of Canada as a part of the British Empire and as a part of the continent of America.

The fortunes of public men and of parties, though of minor importance, are interwoven with the history of the nation. It has been seen that at the outset Macdonald chose a coalition as his instrument of government, not only for the Dominion of Canada, but for the Province of Ontario. In these combinations he showed his weakness and his strength. He could induce liberals of ability to join his coalition, but he could not induce the masses of the liberal party to accept M^c^Dougall, Howland, Aikins, Hincks or Sandfield Macdonald as their leaders. The bringing of Joseph Howe into the cabinet weakened Howe's influence, but added no strength to Macdonald. In Ontario the liberals, under George Brown, Alexander Mackenzie and Edward Blake, attacked the coalition in Ontario and battered it down in four years.

In May and June of 1870, while much important business relating to the new province of Manitoba was under dis-

cussion, Macdonald was seriously ill, and during the greater part of the following session he was in Washington. Macdonald regretted the necessity for this absence, as the leadership of the house would fall on Sir Georges Cartier, who, for reasons arising out of the occurrence at Red River in the preceding year, had lost the confidence of the Ontario members. Sir John's forebodings in this respect, says his biographer, Sir Joseph Pope, proved only too true. 'Many a time have I heard him say that to his absence from Parliament in 1871 he attributed his defeat in 1873.'

The rising in the Red River territory left in Ontario a feeling that the government had acted weakly, that it was under French-Canadian influence, and that it had dealt too leniently with Riel. The Washington Treaty was fiercely attacked as a surrender of Canadian interests. The discontent was not allayed by Macdonald's speech explaining and justifying the treaty. The inner history of the negotiations, showing the enormous difficulties with which he had to contend, was not told until some years after his death.

These causes—the re-consolidation of the liberals under Mackenzie and Blake, the fall of the Sandfield Macdonald coalition, the discontent over the failure to punish the murderer of Scott, the discontent with the Washington Treaty —greatly weakened Macdonald's government at Ottawa, and it came out of the election of 1872 with a diminished majority. The situation is well described by another biographer of Macdonald, Joseph Collins:

> The elections came off through the summer, and the government found itself confronted by staunch opposition. The ghost of poor Scott, murdered in the north-west, rose against it, the Washington Treaty was shaken in the face of the country; the gigantic railway building, a duty to which the country had been pledged, was declared by the opposition to be a mad and impossible scheme; and the Reform party in Ontario was made sturdy by the strength of Mr Blake and the Provincial Ministry. The government came shattered though not defeated out of the contest.

In a few months after the election the government thus

weakened had to meet the shock of the exposure known as the Pacific Scandal. This was an indirect result of one of the conditions under which British Columbia entered Canada; namely, that a railway from the Atlantic to the Pacific should be constructed in ten years from the date of the union, 1871. The opposition contended strongly from the first that the work would impose too heavy a burden on the young Dominion. It was at first resolved that the government should construct the railway, but in 1871, during the absence of Macdonald in Washington, his colleagues became alarmed by the magnitude of the undertaking, and consented to construction by a company subsidized with money and land. Macdonald afterwards said that if present he could have persuaded the house to accept the terms of union without this modification.

The detailed proposition for the building of the road was submitted to parliament in 1872. The line was to extend from Lake Nipissing to the Pacific. The company was to receive fifty million acres of land in blocks of twenty miles in depth on each side of the line, alternating with similar blocks reserved by the government, and a cash subsidy of $30,000,000. There was to be a branch through Manitoba to the frontier of the United States, and another to Lake Superior. Generally, the opposition took the ground that the government was seizing for itself excessive powers and depriving parliament of the control which it ought to have over transactions so extensive.

The government reserved the power of giving the charter to either of two companies—the Canada Pacific Railway, headed by Sir Hugh Allan, a wealthy citizen of Montreal, of the Allan Line of steamships, and the Interoceanic, headed by the Hon. David L. Macpherson of Toronto, a contractor. Or it might charter a company amalgamated from these, or a company distinct from both.

A keen competition sprang up between the Allan and the Macpherson companies. The Allan company was favoured in Quebec, the Macpherson company in Ontario. In Ontario it was feared that if Quebec influence were allowed to prevail, the line would be built so far north of Toronto as to carry all

the western trade to Montreal. Furthermore, there was a prejudice against Allan because he was associated with American capitalists, and it was apprehended that they would seek to make the Canadian road subsidiary to American interests. On the other hand, Macdonald was inclined to give the preference to Allan on account of his greater wealth, his priority in the field, and his control of auxiliary lines. When the government sought to amalgamate the two companies, the old dispute arose in a new form, Allan and Macpherson both laying claim to the presidency.

The American connections made by Sir Hugh Allan and the Canadian prejudice against them are important elements in the case. Alfred Waddington, a wealthy Englishman resident in British Columbia, had at an early period become interested in the project of a transcontinental railway through Canada, and had succeeded in inducing capitalists in New York and Chicago to invest in the enterprise. Waddington then saw Sir John Macdonald and Sir Francis Hincks, who expressed a desire for a Canadian rather than an American company.

With this object in view Allan and Macpherson were approached. Allan tried to work in conjunction with the Americans. But as public prejudice against American control grew stronger he gradually took the position that the road should be built by Canadians only, and that no foreigner should have an interest direct or indirect in the enterprise. This decision was the cause of a rupture with George W. McMullen of Chicago, one of the group of American capitalists with whom Allan had corresponded freely. McMullen took a prominent part in exposing the transaction which led to the fall of the government.

The general elections were held in the summer of 1872, being spread over several weeks, as was the custom at that time. The tide was running against the government, but it succeeded in retaining power by a fair majority.

In the parliamentary session of 1873 Lucius Seth Huntington, liberal member for the constituency of Shefford, Quebec, moved a resolution in these words :

> That he, the said Lucius Seth Huntington, is credibly informed, and believes he can establish by satisfactory

evidence, that in anticipation of the legislation of last session, as to the Pacific Railway, an agreement was made between Sir Hugh Allan, acting for himself and certain other Canadian promoters, and G. W. McMullen, acting for certain United States capitalists, whereby the latter agreed to furnish all the funds necessary for the construction of the contemplated railway, and to give the former a certain percentage of interest, in consideration of their interest and position, the scheme agreed upon being ostensibly that of a Canadian company, with Sir Hugh Allan at its head.

That the government were aware that these negotiations were pending between the said parties.

That subsequently an understanding was come to between the government, Sir Hugh Allan and Mr Abbott, one of the members of the Honourable House of Commons of Canada, that Sir Hugh Allan and his friends should advance a large sum of money for the purpose of aiding the ministers and their supporters at the ensuing general election, and that he and his friends should receive the contract for the construction of the railway.

That accordingly Sir Hugh Allan did advance a large sum of money for the purpose mentioned, and at the solicitation and under the pressing instance of ministers.

That part of the moneys expended by Sir Hugh Allan in connection with the obtaining of the act of incorporation and charter, were paid to him by the United States capitalists under the agreement with him.

The resolution concluded with a demand for a committee of inquiry. Huntington made no speech, and there was no debate. The motion was defeated on a party vote. A day or two afterwards, however, Sir John Macdonald gave notice of a motion for a parliamentary committee. At this point there arose one of those questions of procedure which fill a large place in the history of the period. These questions were sometimes complicated, and can best be understood by bearing in mind that the opposition were striving to keep the contest within the parliamentary arena, and constantly resisting any attempt to substitute any other tribunal for parliament and its committees.

Parliamentary committees at this time were not competent to take evidence under oath. To overcome this difficulty

parliament passed a bill relating to oaths ; but this bill was disallowed upon the advice of the law-officers of the crown in England. Macdonald proposed to solve the question by issuing a royal commission to the members of the committee. But Blake and Dorion, the two liberal members of the committee, declined to accept a commission ; they would have no tribunal but parliament.

Parliament was adjourned from July 3 to August 13. In the interval a very important event happened : the Montreal *Herald* of July 4 published a mass of correspondence between Sir Hugh Allan and George W. McMullen. The letters extended over a period between January and October 1872, and showed that Allan was spending money freely in connection with the obtaining of the charter. Sir Hugh Allan followed with an affidavit in which he declared that he had not paid money to the government as a consideration for the charter.

McMullen then published in the *Herald* a long statement of the history of the negotiations, followed by several incriminating documents. These were letters and telegrams from Sir John A. Macdonald, Georges É. Cartier and John J. C. Abbott, written in the midst of the general elections of 1872, and showing that Macdonald and Cartier were drawing freely upon Allan for election expenses. In one letter, dated August 24, 1872, Cartier asked Abbott 'in the absence of Sir Hugh Allan' to supply the central committee (a party organization) with $20,000, and also to let Sir John Macdonald have $10,000. A telegram from Sir John Macdonald to John J. C. Abbott, dated August 26, 1872, was in these words : 'I must have another ten thousand ; will be the last time of calling ; do not fail me ; answer to-day.'

The publication of these documents produced a powerful effect upon the public mind, and the meeting of parliament was awaited with anxiety. As the time for the opening approached, it became known that the ministers had advised the governor-general to prorogue parliament immediately after its reassembling, upon the ground that this had been the understanding at the adjournment, and to appoint a royal commission to investigate the charges. The members of

the opposition, together with twelve ministerialists, nearly half the house in all, protested against this course, upon the ground that the inquiry ought not to be further delayed nor removed from the jurisdiction of parliament. The governor-general replied in effect that he could not decline the advice tendered to him by his ministers ; that to do so and to refuse to prorogue parliament would be tantamount to dismissing them from his counsels before they had been tried for the offence charged against them.

As soon as the speaker took the chair on August 13, the day fixed for the meeting of parliament, Alexander Mackenzie rose to move a resolution declaring that the charges ought to be investigated by parliament, and not by a commission appointed by the government.

The speaker here interposed, announcing that the message which was the signal for prorogation must be read. There were groans, hisses and cries of 'Go on.' Mackenzie exclaimed, 'No messenger shall interrupt me in the discharge of my duty,' and was proceeding with his speech, when the speaker again intervened. Cries of 'privilege' were heard. The sergeant-at-arms lifted the mace from the table, hesitated and laid it down again. Mackenzie protested that there was nothing to justify parliament being turned out of doors.

The speaker finally delivered his message summoning the Commons to the Senate chamber. The ministers and a few members accompanied him. Nearly a hundred members remained on the floor of the house for a time, afterwards adjourning to a committee room and entering a protest against the removal of the investigation from parliament to a commission virtually appointed by the accused parties.

The royal commission was issued to Judge Day of Montreal, Judge Poulette of Three Rivers, and Judge Gowan of Barrie. Huntington declined to appear before the commission, and the opposition regarded it with distrust. Among the witnesses examined was Sir Hugh Allan, who admitted making payments towards the election expenses of the minister to the amount of $162,600. He had disbursed also large sums for 'preliminary expenses,' making his total outlay about $350,000.

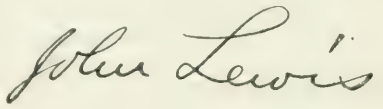
Macdonald's defence is contained in a letter which he addressed to the governor-general on October 9, 1873. He insisted that the advances made by Allan had no connection with the Pacific Railway charter. Allan had subscribed to the election fund in Ontario and Quebec in the face of a positive intimation from the government that the charter would not be given to his company, but to an amalgamated company. His interest in this amalgamated company was assured by his own financial position; therefore there was no necessity to advance a sixpence to secure that interest. His position was assured if the construction of the line went on at all; his fear was that construction would be stopped; that the railway policy would be reversed if the opposition carried the country, and that enormous injury would then be done to the Allan interests. Moreover, if the Pacific Railway were constructed there would be work for other railways in which Allan was concerned, and for his steamships. In short, Macdonald contended that the election subscriptions were not the price of the charter, but were meant to assure the success of a general railway policy in which Allan and the government were alike interested.

Parliament assembled late in October. As soon as the address in reply to the speech from the throne had been proposed, Mackenzie moved a vote of censure on the ministers. The debate, which extended over two weeks, was on a high level of excellence. On November 4 Sir John Macdonald spoke for several hours, making a powerful appeal to his followers. At two o'clock in the morning he was followed by Edward Blake, whose speech was continued on the following day. The ranks of the government supporters wavered. One of them, Donald A. Smith, made a speech of which it was said that it kept the house in suspense until the very close. Finally he acquitted Macdonald of personal corruption, but said he could not support a government shadowed by suspicion. Sir John Macdonald's biographer, Sir Joseph Pope, describes the frame of mind of many of the old friends of the government:

> Apart from those who were clamorous for his fall, and those who were prepared to stand by him through thick

> and thin, there were some who held Macdonald personally free from blame, but were impelled to the conclusion that a Government which had benefited politically by large sums of money derived from persons with whom it was negotiating on the part of the Dominion could no longer command their confidence and support.

It was no surprise to the country, already sated with sensations, when, on November 5, Sir John Macdonald, without awaiting the vote of parliament, resigned. A new government and a new parliament were the closing events of a year of extraordinary political excitement.



THE MACKENZIE ADMINISTRATION

1873-1878

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I
THE LIBERALS IN POWER

ALEXANDER MACKENZIE had for five years after 1868 been the real, though not the titular, leader of the opposition. In 1873, at the opening of the session, steps were taken to elect a leader formally. Mackenzie thought the leader should be chosen from Quebec, and he and Blake agreed that Antoine Dorion, a distinguished French liberal, would be acceptable to Ontario. The voice of the parliamentary party was overwhelmingly in favour of Mackenzie. It was therefore Mackenzie who, upon the resignation of Sir John A. Macdonald, was asked to form an administration.

Mackenzie himself took charge of the department of Public Works, and this is now admitted to have been an error. The multiplicity of detail connected with the office severely taxed his energies, and the character of the office, known as a great spending department, was such that the minister was pestered with demands for the exercise of patronage. There were two reasons for Mackenzie's assumption of the office. The air at that time was filled with theories about the precise number of ministers who should compose a cabinet. Mackenzie was conscientious and industrious, and would have felt that he was shirking a duty if he had left all the details of administration to others and kept himself free for great affairs of state.

The ministry was composed as follows :

ALEXANDER MACKENZIE, prime minister and minister of Public Works.

ANTOINE DORION, Q.C., minister of Justice.

EDWARD BLAKE, Q.C., without portfolio.
LUC LETELLIER DE ST JUST, minister of Agriculture.
RICHARD J. CARTWRIGHT, minister of Finance.
SIR A. J. SMITH, minister of Marine and Fisheries.
DAVID LAIRD, minister of the Interior.
DAVID CHRISTIE, secretary of state.
ISAAC BURPEE, minister of Customs.
WILLIAM ROSS, minister of Militia and Defence.
DONALD A. MACDONALD, postmaster-general.
THOMAS COFFIN, receiver-general.
TELESPHORE FOURNIER, Q.C., minister of Inland Revenue.
RICHARD W. SCOTT, Q.C., without portfolio.

As Macdonald had resigned without a vote of the house, Mackenzie did not know how far he could depend upon its support, and he believed that the people of Canada ought to pronounce on the Pacific Scandal. Accordingly parliament was dissolved on January 2, 1874. The law did not then require the holding of the elections on one day, but Mackenzie voluntarily fixed nearly all the elections for January 22, 1874. He was a believer in simultaneous elections, and later in 1874 made a radical change in the election law. All elections were to be on one day, with exceptions in the case of some remote constituencies. Property qualification was abolished and vote by ballot introduced. By another measure the trial of election petitions was transferred from the House of Commons and its committees to election courts composed of judges.

In his election address Mackenzie promised vote by ballot, an insolvency law, a Supreme Court for the Dominion and the revision of the militia system. As to the Pacific Railway he said:

> We must endeavour to arrange with British Columbia for such a relaxation of the terms of Union as may give time for the completion of the surveys of the Pacific Railway, and the acquisition of the information necessary to an intelligent apprehension of the work, and for its subsequent prosecution with such speed and under such management as the resources of the country will permit, without too largely increasing the taxation of the people.

As a temporary means of access to the North-West he proposed to use the water stretches between the Rocky

Mountains and Fort Garry, and between Fort Garry and Lake Superior, and also to connect Manitoba and the American system of railways by way of Pembina. The election resulted in an overwhelming majority for the new government.

Protests from British Columbia

One of the first questions that engaged the attention of the new government was the modification of the terms of union with British Columbia. Owing partly to the difficulties which had culminated in the fall of the Macdonald government, little progress had been made for two years in the building of the transcontinental railway. The province in 1873 protested against the delay.

In February 1874 James D. Edgar, a prominent liberal member of parliament, was appointed by the government to go to British Columbia and endeavour to obtain a modification of the terms. Edgar made several formal proposals, including postponement of the time for completion of the road, building a line from Esquimalt to Nanaimo, immediate surveys on the mainland, a wagon road along the line of the railway in the province, a telegraph line across the continent, and a large annual expenditure as soon as the surveys were completed. These terms were rejected, and in June 1874 the British Columbia government sent G. A. Walkem, Q.C., premier and attorney-general, to England to protest against the repudiation of the terms of union.

Lord Carnarvon, secretary of state for the Colonies, now offered his services as arbitrator, and his offer was accepted. The heads of his decision were as follows: (1) A railway from Esquimalt to Nanaimo, to be commenced and completed expeditiously; (2) surveys on the mainland, to be pushed vigorously; (3) wagon road and telegraph line, to be constructed immediately; (4) an expenditure of two millions a year on railways within the province when the surveys were sufficiently advanced; (5) the railway to be finished by December 31, 1890—at least so as to connect with American railways and reach the west end of Lake Superior.

The Dominion government accepted these terms, and

Mackenzie in 1875 introduced a bill for the construction of the Esquimalt and Nanaimo Railway. Edward Blake and several other liberals voted against the bill, holding that it imposed too heavy a burden on Canada, and in the Senate it suffered defeat. The discontent in British Columbia was thus revived.

At length the governor-general, Lord Dufferin, decided that it was a case for his intervention, and he visited the province to bring about a reconciliation. His speech at Victoria was a masterpiece of diplomacy. He loyally upheld Mackenzie; he showed that the delay was largely due to the extraordinary difficulty of surveys in a country where the passes through the mountains were unfrequented, unlike the United States, where every track and trail was wayworn through the passage of troops of immigrants to Salt Lake City, to Sacramento and the Golden Gate. He declared that Mackenzie was not responsible for the action of the Senate, and emphatically denied that there was collusion. British Columbia, he said half jocularly, must accept part of the blame for an impossible bargain. 'The mountains which have proved our stumbling-block were your mountains.'

Lord Dufferin's tactful speech, followed by Mackenzie's vigorous prosecution of the surveys, definite adoption of the Burrard Inlet route and construction of several important pieces of railway, quieted and satisfied British Columbia, and the agitation gradually ceased.

Mackenzie's railway policy was announced in 1874. The question of government construction or private enterprise was left open. A subsidy of $10,000 and 20,000 acres a mile was offered, with a guarantee of four per cent for a term of years, on a sum per mile to be stated in each contract. Contracts for the main line were to be submitted to parliament. The government reserved the right to resume possession of the whole or any section of the railway, on payment of ten per cent over the original cost, less the value of land and money subsidies. The branch line from Fort Garry was to be pushed forward rapidly to connect with American railways.

Capitalists would not undertake construction on these terms, and the work was carried on by the government.

Mackenzie placed under contract 114 miles from Selkirk to Rat Portage, and 113 miles from Fort William to English River. The Pembina branch from Winnipeg to the American frontier was completed in 1878.

Reciprocity

In 1874 an opportunity arose to negotiate a reciprocity treaty with the United States. Under the Treaty of Washington there was to be an arbitration to determine the value of the use of the Canadian fisheries by American fishermen. George Brown had suggested that a measure of reciprocity in trade would be more acceptable to Canada than a compensation in cash. In a visit to Washington he formed the opinion that a bill for the renewal of the Elgin Treaty, if submitted to Congress at once, would be carried.

On March 17, 1874, a commission was issued appointing Sir Edward Thornton, British minister at Washington, and the Hon. George Brown, then a senator of Canada, as joint plenipotentiaries to negotiate a treaty of fisheries, commerce and navigation with the United States. The composition of the commission, with Canada and Great Britain equally represented, was regarded as a decided advance on that of 1871, when Sir John Macdonald, as one commissioner out of five, had so unsatisfactory an experience in endeavouring to uphold the rights of Canada. Brown was selected not only because of his knowledge of and interest in reciprocity, but because his steady and strong friendship for the North during the war had made him acceptable to the government of the United States.

A draft treaty was agreed upon. It provided for: (1) the concession to the United States of the Canadian fisheries for twenty-one years; (2) the admission duty free into both countries of certain natural products; (3) the admission duty free into both countries of certain manufactured articles; (4) the enlargement of the Welland and St Lawrence canals; (5) the construction of the Caughnawaga and Whitehall canals; (6) reciprocity in the coasting trade on the Lakes and the St Lawrence; (7) reciprocal free use of Canadian, New

York and Michigan canals; (8) reciprocal admission of vessels built in either country to registry in the other; (9) a joint commission for efficient lighting of common inland waters; (10) a joint commission for protection of fish in inland waters.

The treaty was a wide one, embracing all important farm products, grains, vegetables, fruits, animals and dairy products—and a list of manufactures including agricultural implements, boots and shoes, several kinds of cotton fabrics, furniture, carriages, wagons and other vehicles, engines and many other products of iron and steel.

Brown found that American misapprehension of Canada, its revenues, commerce, shipping, railways and industries, was truly marvellous. 'Americans believed that the trade of Canada was of little value to the United States; that the reciprocity treaty had enriched Canada at their expense; and that the abolition of the treaty had plunged Canada in despair.' He prepared a paper in which he showed that the termination of the treaty did not ruin Canadian commerce, but that the external trade of Canada, which had averaged $115,000,000 from 1854 to 1862, rose to $142,000,000 in the year following the abrogation, and to $240,000,000 in 1873. As to wheat, flour, provisions and other articles of which both countries had a surplus, the effect of the high American duties had been to send the products of Canada to compete with those of the United States in neutral markets. President Grant sent the treaty to the Senate with a half-hearted and non-committal message. It reached the Senate only two days before adjournment, and was returned to the president with the advice that it was inexpedient to proceed with its consideration.

In Canada the treaty was subjected to much adverse criticism. A convention of manufacturers in Hamilton denounced it as a departure from the policy 'for many years maintained in Canada, of encouraging industries.' The Dominion Board of Trade declared against it. In his speech in the Senate in 1875, justifying the treaty, Brown regretted the growth of protectionist sentiment, which he attributed to the burden caused by the increased debt, and to the deceptive cry of incidental protection. The charge that the

treaty would discriminate against British imports was easily disposed of. It was shown that every article admitted free from the United States would be admitted free from Great Britain. But as this meant that the Canadian manufacturer would be subjected to British as well as American competition, it only strengthened the protectionist objection.

Owing to the failure of these negotiations, the arbitration to fix the compensation for the use of the Canadian fisheries went on, and $5,500,000 was awarded to Canada for the use of the fisheries during the time fixed by the Washington Treaty of 1871. The commission was comprised of Sir Alexander Galt for Canada, the Hon. Judge Kellogg for the United States, and Maurice Delfosse, Belgian minister at Washington, as umpire. Judge Kellogg dissented, and there was much dissatisfaction in the United States, but finally the amount was paid.

Canada First

A movement which powerfully affected public life during the later years of the Macdonald administration and the early years of the Mackenzie régime was known as 'Canada First.' It was brought into life by the Riel Rebellion and the murder of Scott. It did much to arouse public feeling against Riel and against the Macdonald government for its weakness in dealing with the North-West question. In 1874 the Canadian National Association was organized, with the following platform: (1) British connection, and consolidation of the Empire, and in the meantime a voice in treaties affecting Canada; (2) closer trade relations with the British West Indies with a view to ultimate political connection; (3) an income franchise; (4) the ballot with compulsory voting; (5) representation of minorities; (6) encouragement of immigration and free homesteads; (7) the imposition of duties for revenue, so adjusted as to afford every possible encouragement to native industry; (8) an improved militia system under trained Dominion officers; (9) no property qualification for members of the House of Commons; (10) reorganization of the Senate; (11) pure and economical administration of public affairs.

At one time it appeared as if the new movement had secured a strong ally in the Hon. Edward Blake. On October 3, 1874, he made a speech at Aurora, Ontario, which greatly encouraged the Canada First party and alarmed the old-line reformers. He advocated the federation of the Empire, reorganization of the Senate, compulsory voting, extension of the franchise and representation of minorities. He said that it was impossible to foster a national spirit without national interests. He described the Canadian people as four millions of Britons who were not free. He pointed out that Canada might be plunged in war by a policy in which she had no voice. The speech aroused enthusiasm among the younger and more independent element of the liberal party and caused uneasiness among the more rigid partisans, who saw in it insurgent tendencies. Some also suspected the Canada First men of leaning towards Canadian independence, a suspicion which was strengthened by the election of Goldwin Smith as president of the National Club—formed to assist the movement on its social side. On October 27 the Toronto *Globe* attacked the Canada First party and Goldwin Smith for promoting treason. Goldwin Smith replied that he favoured not revolution but evolution :

> Gradual emancipation means nothing more than the gradual concession by the mother country to the colonies of powers of self-government. This process has already been carried far. Should it be carried further and ultimately consummated, as I frankly avow it must, the mode of proceeding will be the same that it has always been. Each step will be an act of Parliament passed with the assent of the Crown. As to the filial tie between England and Canada, I hope it will endure for ever.

While Goldwin Smith thus frankly avowed his belief in the ultimate independence of Canada, there were others connected with the movement, including Colonel Denison, who were strong imperialists. The bond which united them was national spirit ; they voiced and appealed to the generous enthusiasm of Canadians who wished to see their country take the place of a nation, and do the work of a nation, in the world.

A weekly journal called the *Nation*, having a high standard of literary excellence, and a Toronto daily newspaper entitled the *Liberal*, were established as a result of the impulse given by the Canada First movement, and had brief though brilliant careers. Edward Blake ceased to give the movement his countenance, and re-entered the Mackenzie government, from which he had retired. The organization disappeared, but it had voiced and helped to awaken national sentiment, and its influence was enduring. Its advocacy of protection was upon national rather than upon economic grounds ; and in the early history of the protectionist campaign this teaching could be plainly discerned, as well as in the adoption of the name 'The National Policy.' It was largely by appealing to this national sentiment that the conservatives afterwards obtained the approval of the country for their protective tariff, and also for the bold enterprise of building the Canadian Pacific Railway.

The Supreme Court

In 1875 the government, acting on the power conferred by Section 101 of the British North America Act, introduced a measure establishing a Supreme Court for Canada.[1] It was to be a court of appeal in all civil cases, and, with certain limitations, in treason, felony and misdemeanour. Special jurisdiction was given to the court in certain constitutional questions, including (1) controversies between provinces and the Dominion of Canada ; (2) controversies between provinces ; (3) the validity of acts of the parliament of Canada or of any province. The legislation was attacked on the ground that it impaired the jurisdiction of the provincial courts. This point was emphasized by some French-Canadian members, who urged that the court might not thoroughly understand the peculiar laws of Quebec, and that litigants in that province might thus be exposed to injustice. It was argued that parliament had no power to confer jurisdiction on

[1] A bill having the same purpose had been drafted by Sir John Macdonald in 1869 and introduced in that session and in 1870, but it was not until 1875 that the measure became law. Telesphore Fournier, the minister of Justice, in introducing the bill of 1875, paid a handsome tribute to Sir John Macdonald's work.

the court in regard to provincial laws, because these were not 'laws of Canada' within the meaning of Section 101 of the British North America Act. Parliament, however, decided to grant this jurisdiction, which has not since been successfully assailed. Another objection was raised to the provision that the judgment should be final and conclusive, and that there should be no appeal to any court in Great Britain 'saving any right which Her Majesty may be graciously pleased to exercise as a royal prerogative.' It was urged that this would endanger British connection. In answer to this objection it was explained that the litigant would not be debarred from going to the foot of the throne, but that he must choose between the appeal to the Supreme Court and the appeal to the Judicial Committee of the Privy Council; while the appeal from the Canadian court to the Privy Council might still be taken by leave.

The Clergy and Politics

By-elections held in Quebec in 1876 raised the question of clerical interference in elections. Bishop Bourget of Montreal denounced Catholic liberalism, and declared that it had been described by the Pope and by the Archbishop and Bishops of Quebec as a thing to be regarded with the abhorrence with which one contemplates a pestilence. Catholic liberalism was practically identified with liberalism in politics, though Wilfrid Laurier, in a speech to which reference will be made later on, contended that the two things were absolutely different. Roman Catholic priests in the county of Charlevoix declared that to vote for the liberal candidate would be a mortal sin. To such an extent was their intimidation carried that proceedings were taken to set aside the election of Hector Langevin, the conservative candidate, because of undue influence and spiritual intimidation. Judge Routhier, before whom the case was first tried, sustained the election, holding that the clergy had done no more than take advantage of the free exercise of the Roman Catholic religion, guaranteed at the Conquest. But this judgment was reversed and the election annulled by the Supreme Court. That court declared that the threat of spiritual penalties constituted

an unlawful interference with the full exercise of the franchise.

In June 1877 Wilfrid Laurier, then a rising member of the Quebec liberal party, delivered at Quebec a notable address on ' Political Liberalism.' It was an eloquent vindication of liberalism, especially as manifested in the growth of British free institutions. By laying stress on British history he sought to free liberalism from the reproach of irreligion, and of sympathy with the revolutionary doctrines which had disturbed Europe. He declared that Canadian liberals had no desire to exclude the clergy from taking part in political affairs, but the clergy must use persuasion, not intimidation : ' The right of interference in politics ends at the spot where it encroaches on the elector's independence.'

In October 1877 Wilfrid Laurier became minister of Inland Revenue, in succession to Joseph Édouard Cauchon, appointed Lieutenant-Governor of Manitoba. When he sought re-election in Drummond and Arthabasca he was unexpectedly defeated by a small majority. It was a defeat for the administration, and a foreshadowing of the overthrow of September 1878 ; but it was also largely due to persistent repetition of the story that Laurier was a bad Catholic, and that he and his party were under the ban of the Church. Laurier was afterwards elected in Quebec East. In spite of his moderate and eloquent address and of the Charlevoix decision, the hostility of the clergy to the liberal party continued, and it probably contributed to the overwhelming defeat of the government in the general election of 1878, so far as Quebec was concerned.

Temperance Legislation

The question of the prohibition or regulation of the liquor traffic figures largely in Canadian politics. In 1874 and 1875 many petitions for the prohibition of the liquor traffic were presented to the Dominion parliament. A committee to which these petitions were referred recommended that full information be obtained as to the working of prohibition laws in certain of the United States. A commission appointed for

this purpose reported favourably to prohibition. In 1875 George W. Ross, a liberal and a prominent advocate of temperance, moved a resolution declaring that 'Parliament is prepared, as soon as public opinion will effectively sustain stringent measures, to promote such legislation as will prohibit the manufacture, importation and sale of intoxicating liquors, as far as the same is within the competence of this House.' Dr John C. Schultz, a conservative member, went further, moving an amendment declaring that it was the duty of the government to submit a measure for prohibition at the earliest practicable moment. Mackenzie denounced this amendment as a move intended merely to embarrass the government. No conclusion was arrived at. In 1876 and 1877 the question was raised whether the parliament of Canada or the provincial legislatures had the right to prohibit. These two questions—the question of jurisdiction, and the effect of prohibition upon the fortunes of the two political parties—were continually reappearing. In 1877 Mackenzie declared frankly that public opinion was not ripe for prohibition; that, therefore, a prohibitory law could not be enforced, and that the attempt might even injure the cause of temperance.

In 1878 it was decided to move along the line of local prohibition. There was already a measure of this kind on the statute book, the Dunkin Act. It applied, however, only to Ontario and Quebec. It provided for local option in townships and smaller municipalities. This limitation of area was regarded as a defect, and the new measure provided for prohibition in entire counties. It was called the Canada Temperance Act, and was popularly known as the Scott Act, from the Hon. Richard W. Scott, who introduced it in the Senate. To bring the measure into effect in any county the machinery of the Dominion election law was employed. One-fourth of the persons qualified to vote in a Dominion election were required for a petition for a vote. The voters were the same as for Dominion elections, and a majority of the votes cast would bring the law into effect. If rejected, it could not be submitted again for three years.

The law at first achieved a great success, and many

counties were brought under prohibition. About the year 1888 a reaction set in, and the law was repealed in county after county by decisive majorities. Subsequently attempts were made to have prohibition laws enacted for the whole Dominion and for the Province of Ontario. A plebiscite was taken in each case and a majority recorded for prohibition, but there the matter ended.

So far as the Province of Ontario is concerned, the prohibitionists have returned to the idea of local option in small municipalities. The advantage of this plan is that the small municipality is more likely to remain 'dry' than the county. A county under the Scott Act might be carried for prohibition, but it might contain sections where the people were strongly opposed to the measure. These would become centres and strongholds of disaffection. A small area like a township is less likely to contain such centres, and as the by-law can be carried or repealed only by a three-fifths majority there is less likelihood of change.

In 1910 the Scott Act was in force in twenty-two counties or cities, of which ten were in Nova Scotia, ten in New Brunswick and two in Manitoba. A large part of Ontario is under local option, as provided for by the provincial law.

The Letellier Case

To students of politics and of the constitution the Letellier case is of considerable interest. Letellier de St Just, a strong liberal and a colleague of Alexander Mackenzie, was appointed Lieutenant-Governor of Quebec. The ministry under de Boucherville was conservative, and there was ill-feeling and friction between the governor and his advisers. Letellier de St Just was a proud and sensitive man, and he was influenced by a belief that his ministers were deliberately flouting his authority and endeavouring to humiliate him. On paper there was a good deal of wrangling over constitutional questions, but beneath the controversy there lay much personal and partisan bitterness.

The grounds on which Letellier dismissed his prime minister in March 1878 were that important legislation

involving the levying of taxes had been submitted to the legislature without consultation with him, and that he had thus been placed in a false position, in conflict with the legislature's will. He also criticized the policy and administration of the government as extravagant. Henri G. Joly undertook the task of forming a new government. The legislative assembly voted that the dismissal of de Boucherville was an imminent danger to responsible government in Quebec, was an abuse of power, in contempt of the majority of the house, whose confidence the government possessed, and was a violation of the liberties of the people. Other votes of want of confidence in the new government were passed. The legislature was then prorogued. Both parties to the dispute transmitted their explanations to the Governor-General of Canada.

In April 1878 Sir John Macdonald brought the matter before the House of Commons. He moved a resolution declaring that the dismissal was unwise and subversive of the position accorded to the advisers of the crown since the concession of the principle of responsible government to the British North American colonies. He said that it was strange that, having gained responsible government almost at the point of the bayonet, it was necessary in 1878 to defend its first principles. The Quebec ministry should have been free to govern so long as they possessed the confidence of the legislature, unless there was reason to believe that the legislature did not represent the country. He drew a distinction between the position of the crown in regard to legislation and in regard to administration. The crown, he argued, was only nominally a branch of the legislative power. Any member of the Quebec legislature could have introduced the measure for which the lieutenant-governor dismissed his advisers, and if the house chose to carry it, the ministry must yield. It would be contempt of the privileges of the legislature to attempt to justify resistance to its will by referring to the opinions of the crown. Macdonald said that he had served under five governors of Canada, that his ministry had never submitted a bill to a governor, nor obtained anything but a general assent to its financial measures.

Alexander Mackenzie, while he sympathized with the

lieutenant-governor, privately expressed the opinion that his action was imprudent. In his reply to Sir John Macdonald, however, he took the ground that the electors of Quebec must pronounce upon the action of the lieutenant-governor. If the House of Commons condemned him, its judgment might be opposed to the verdict of the electors. The proposed interference would be destructive of provincial autonomy and subversive of responsible government. The lieutenant-governor could not be censured without censuring his new advisers and thus anticipating the free action of the people. Macdonald's amendment was defeated, but a similar amendment was carried in the Senate, where there was a conservative majority.

The result of the Quebec elections was for some time in doubt, but the friends of the new government succeeded in electing their candidate for speaker, and the Joly government remained in power until October 30, 1879.

The defeat of the Mackenzie government in September 1878 gave encouragement to the foes of the lieutenant-governor of Quebec. Three members of the deposed de Boucherville administration petitioned the governor-general in council for the dismissal of the lieutenant-governor. In the session of 1879 Mousseau, a conservative member, submitted a motion in the same terms as Sir John Macdonald's of 1878, which was carried. Macdonald then recommended to the governor-general, the Marquis of Lorne, that the Lieutenant-Governor of Quebec should be removed. The Marquis of Lorne, with the assent of his ministers, referred the question to the imperial authorities for instructions. The colonial secretary replied that a lieutenant-governor had the indisputable right to dismiss his ministers; that for any action he might take he was directly responsible to the Governor-General of Canada, and that the governor-general must act upon the advice of his responsible ministers. The dispatch suggested reconsideration by the Canadian ministers, and the governor-general in transmitting it asked the cabinet to state whether it had given due consideration to the support afforded by the electorate of Quebec to Joly, the minister who was constitutionally responsible for the action of the lieutenant-governor. On

July 9, 1879, the provincial legislature of Quebec passed an address declaring that it was for Quebec to pass judgment on the wisdom of the lieutenant-governor in changing his ministers; that the elections in Quebec showed that the people supported the new government; and that the attempt to dismiss the governor on the strength of a party vote in the House of Commons and Senate was an encroachment on provincial rights. The upshot was that the lieutenant-governor was dismissed, the cause assigned being that after the vote of the House of Commons in 1879 and of the Senate in 1878 ' Mr Letellier's usefulness as a lieutenant-governor was gone.'

The submission of the question to England was severely criticized by the opposition, and in 1880 Mackenzie moved a resolution declaring that it was subversive of the principles of responsible government. A criticism of another character was made by Alpheus Todd, the librarian of parliament and an eminent writer on constitutional questions. He said that the government, if they desired to dismiss Letellier, should have taken the initiative. To permit the initiative in such a momentous proceeding to be undertaken by either house of parliament would be to allow an undue interference with executive responsibility.

II

THE NATIONAL POLICY

THE restoration of the conservative party to power in 1878 having been due mainly to its advocacy of protection, the question has been raised whether Sir John Macdonald was a convinced protectionist or adopted the policy as an opportunist. The truth seems to be that he had a leaning towards protection, and that the conservative party had made various starts in that direction, but that the issue was not sharply defined until 1876.

Galt's tariff of 1858-59 was so distinctly protectionist as to provoke a threat of disallowance from the colonial secretary, acting under pressure from British manufacturers. In 1866

the tariff was lowered out of regard for feeling in the Maritime Provinces. The tariff of old Canada was regarded in the Maritime Provinces as high, and those who promoted Confederation 'found it necessary to give the people of the Maritime Provinces the most sacred and solemn assurances that if this union could be accomplished, the Maritime Provinces would not have to assume the burden and responsibility of a high tariff.' This is the testimony of W. S. Fielding, minister of Finance from 1896 to 1911, who adds 'that it was an unwritten treaty between the promoters of the union and their friends in the Maritime Provinces.' In 1867 the tariff stood at about 15 per cent. Protectionists contended that between 1867 and 1873, in spite of the low tariff, the industries of Canada did not suffer, because the industries of the United States were paralysed by the Civil War, and were unable to compete with those of Canada upon Canadian ground; but that by 1873 the industries of the United States had revived, and that American manufacturers, in their eager search for foreign markets, made a slaughter market of Canada.

As famine forced Peel's hand and brought about the repeal of the Corn Laws, so depression forced the issue of protection in Canada. In the speech from the throne at the opening of the session of 1874 a deficit was foreshadowed, and reference was made to commercial depression. To meet the deficit the duties were raised from 15 to 17½ per cent, but Mackenzie insisted that this increase was for revenue only, not for protection. The depression was closely related to that which began in the United States in 1873. It was some time before its full weight fell upon Canada, but from 1875 onward it grew worse. There was a distressing lack of employment. Manufacturers complained that the country was made a slaughter market for the surplus products of the United States. Failures in business were frequent, and the number increased from year to year. The value of bank stocks fell to an alarming degree.

There had been an agitation for protection even before the depression was felt in its full force. It has been shown that the Canadian opposition to the Brown treaty of 1874 came largely from manufacturers who desired protection. In his

speech in the Senate in 1875 justifying his treaty, Brown said :

> Time was in Canada when the imposition of a duty on any article was regarded as a misfortune and the slightest addition to an existing duty was resented by the people. But increasing debt brought new burdens. The deceptive cry of incidental protection got a footing in the land ; and from that the step has been easy, to the bold demand now set up by a few favoured industries : that all the rest of the community ought to rejoice to be taxed 17½ per cent.

There was a protectionist plank in the platform of the Canadian National party (Canada First) and a similar plank in the Rouge platform of 1872. The *Nation* advocated a 'National Tariff.' 'In Canada,' it said, 'we should build up a policy that would promote commercial prosperity regardless of theory. To protection in the true sense we have no desire to return.' There were some avowed advocates of protection, but as a general rule the writers and speakers on this side disliked to label themselves protectionists. They talked of a national tariff, a national policy, a policy framed to meet the peculiar position of Canada.

Protection was not at first strictly a party question. Between the sessions of 1875 and 1876 the government was strongly pressed to increase the tariff for protective purposes. Until the budget of 1876 was introduced it was not definitely known that the request would be refused. Charles Tupper, in criticizing the budget speech, said he was neither a free trader nor a protectionist, that he would not discuss free trade or protection as abstract principles in a country of five millions lying alongside one of forty millions. 'Canada wants a national policy,' he said. He moved no amendment, and in fact the first protectionist amendments were moved by liberals —Æmilius Irving, representing the manufacturing city of Hamilton, and T. H. Workman, Montreal. John Macdonald of Toronto, a liberal, also advocated a change of a similar kind. Other liberals, including John Charlton of North Norfolk and William Paterson of Brant, were friendly to protection, but thought the tariff high enough. A note-

worthy speech was made by Wilfrid Laurier, who denied that free trade was a liberal and protection a conservative principle. He pointed out that in Great Britain both parties accepted free trade, that in France liberals were divided on the question, that in Canada there were lifelong and consistent liberals on both sides, while conservatives had only adopted protection openly within two or three days.

Finally Sir John Macdonald took the leap, and made protection a definite party issue by moving a resolution for such a readjustment of the tariff as would alleviate the stagnation of business and 'would also afford fitting encouragement to the struggling manufacturing industries as well as to the agricultural pursuits of the country.' During 1876 and 1877 the protectionist campaign was carried on with vigour by public meetings and in the press. The conservative party became thoroughly committed to protection, and the liberal party to revenue tariff.

It has been said that the government had at first resolved to raise the duties from 17½ to 20 per cent, but yielded to the objections of liberals in the Maritime Provinces. The government could probably have saved itself by a small increase, and it has been contended that the refusal was obstinate and unreasoning; that it had already increased the duties from 15 to 17½ per cent, and that it might without any great sacrifice of principle have made a further increase to 20 per cent. On the other side it could be urged that since the 2½ per cent increase made in 1874 had not removed the cloud of depression, there was no assurance that it would disappear with another 2½ per cent. The manufacturers desired, not a horizontal increase in the percentage of duty, but a differential increase varying with the requirements of each industry. Having once acceded to a demand made on strictly protectionist grounds, the government would have been compelled to go further and to make surrenders from year to year until protectionists were satisfied or depression ceased. They stopped at 17½ per cent because they felt that they had arrived at the parting of the ways.

In the session of 1878, the last held before the general election, Macdonald moved the resolution which is regarded

as representing most clearly the idea of the National Policy.

> That this House is of opinion that the welfare of Canada requires the adoption of a National Policy which by a judicious readjustment of the tariff will benefit the agricultural, the mining, the manufacturing and other interests of the Dominion.
>
> That such a policy will retain in Canada thousands of our fellow countrymen, now obliged to expatriate themselves in search of the employment denied them at home ; will restore prosperity to our struggling industries, now so sadly depressed ; will prevent Canada from being a sacrifice market ; will encourage and develop an active interprovincial trade ; and moving (as it ought to do) in the direction of reciprocity of tariffs with our neighbours, so far as the varied interests of Canada may demand, will greatly tend to procure for this country eventually a reciprocity of trade.

Defeat of Mackenzie

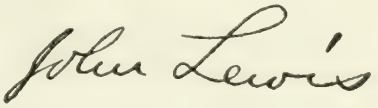
Mackenzie was not aware of the strength of protectionist feeling. In June 1878 John Charlton wrote to him that the government was resting in a fancied security and might wake to a realization of disaster. He advised the prime minister to postpone the date of the general election, to have the fiscal question thoroughly discussed and the arguments of protectionists answered by good speakers. Mackenzie answered that there was no danger. After the election, in a letter to Luther Holton, an old and highly esteemed liberal of Quebec, he admitted that he was completely surprised, that he had discerned no signs of disaffection in his party.

During the campaign Sir John Macdonald made an announcement which was afterwards frequently quoted against him. Senator Boyd of New Brunswick telegraphed him in these words : ' Government press here state that you propose to raise the tariff to 35 per cent. Can I contradict this ? ' Macdonald replied : ' It is an absurd falsehood ; neither in London nor elsewhere have I gone beyond my

motion in Parliament. I have never proposed an increase, but a readjustment.'

The election, which was held on September 17, resulted in an overwhelming defeat for the government. In Ontario, in Quebec and in Nova Scotia the conservative majority was two to one. British Columbia, Manitoba and Prince Edward Island were almost solidly conservative, and New Brunswick alone stood by the government. The government resigned on October 16, 1878, and on the following day the new ministry was formed as follows :

JOHN A. MACDONALD, prime minister and minister of the Interior.
SAMUEL L. TILLEY, minister of Finance.
CHARLES TUPPER, minister of Public Works.
HECTOR L. LANGEVIN, postmaster-general.
J. C. AIKINS, secretary of state.
J. H. POPE, minister of Agriculture.
JAMES MACDONALD, minister of Justice.
MACKENZIE BOWELL, minister of Customs.
J. C. POPE, minister of Marine and Fisheries.
L. F. G. BABY, minister of Inland Revenue.
L. F. R. MASSON, minister of Militia and Defence.
JOHN O'CONNOR, president of Council.
R. D. WILMOT, without portfolio.



CANADA UNDER MACDONALD

1878-1891

CANADA UNDER MACDONALD, 1878-1891

The New Tariff

TILLEY'S first budget, introduced on March 4, 1879, was a thoroughgoing measure of protection. He compared the prosperity and the abundant revenues of the Macdonald administration with the ruin and disaster which had overtaken every industry in Canada after 1873. He deplored the large volume of imports and the heavy balance of trade against Canada, which had been made a slaughter market by American manufacturers. He promised that the additional two millions of revenue would be levied on foreign products, not on imports from Great Britain, and that duties would be levied on many imports from the United States then on the free list. Although the United States had not responded to Canadian overtures for reciprocity, the budget contained an offer of reciprocity in natural products. Specific duties were largely substituted for *ad valorem* duties.

The opposition went squarely on record against the new policy. Sir Richard Cartwright denounced it as framed in the interest of rings and of political partisans, whose influence would be more potent than ability, inventiveness and industry. Mackenzie moved that the house

> regards the scheme now under consideration as calculated to distribute unequally and therefore unjustly the burdens of taxation ; to divert capital from its natural and most profitable employment, and to benefit special classes at the expense of the whole community ; tending towards rendering futile the costly and persistent efforts of this country to secure a share of the immense and growing carrying trade of this continent, and to create an antagonism between the commercial policy of

the Empire and that of Canada that might lead to consequences deeply to be deplored.

The protective character of the tariff caused some complaint in England. John Bright questioned the home government, and some manufacturers complained to the House of Commons. But the London *Times* and the colonial secretary fully admitted the right of the colonies to self-government in fiscal matters.

About the end of the year 1879 the country entered upon a period of prosperity which continued for several years. The good times were attributed to the National Policy by the friends of that measure; by its opponents to the passing away of a period of world-wide depression. In any case the country was satisfied, and the government received the full benefit of its satisfaction.

On April 28, 1880, Mackenzie announced in the House of Commons that he had resigned his position as leader of the opposition. His health had been failing for some time, and there had been rumours that he would resign and that his place would be taken by the Hon. Edward Blake. On the morning following the resignation the leadership was conferred upon Blake. The new leader was disposed to take issue with the government upon questions other than the tariff; and the announcement of the new railway policy of the government thrust the question of the tariff into the background for a time.

The Canadian Pacific Railway

In May 1879 Sir Charles Tupper, as minister of Railways, announced the railway policy of the government in a series of resolutions, declaring that the transcontinental line would form an imperial highway, would open up vast fertile lands and form an outlet for the over-populated British Islands and Europe, and would by its construction give employment to many of the unemployed in Great Britain, and that for these reasons imperial co-operation should be sought. It was proposed that a hundred million acres of land with the minerals be vested in a commission, the land to be sold at not

less than $2.00 an acre, and the proceeds to form a fund for the construction of the railway.

In the summer of 1879 Sir John Macdonald, Sir Leonard Tilley and Sir Charles Tupper visited England and endeavoured to obtain assistance from the imperial government. In 1880 it became evident that the policy governing the mode of construction and control had been changed. There were several ministerial declarations that private capital would be forthcoming to build the road. Late in October it was announced that a contract had been made with a syndicate of capitalists for the purpose. Parliament was called in December 1880, in order that the agreement might be ratified. The terms were as follows: the Canadian Pacific Railway Company was to receive $25,000,000 in cash, and 25,000,000 acres of land, besides certain portions of the road already completed or under construction by the government. These were valued by Sir Charles Tupper at $28,000,000, which was a minimum estimate. The grant of land was to be made in alternate sections a mile wide and twenty-four miles deep on each side of railway. If any sections were unfit for settlement the company could select other lands in the fertile belt. The company was also to have lands for road-bed, station grounds and workshops, also dock ground and water frontage at terminals on navigable waters. All construction material was to be admitted free of duty. No competing road could be built south of the main line in Western Canada for twenty years. All station grounds, rolling stocks and capital stock of the company were to be free for ever from taxation by Dominion, province or municipality. The lands of the company in the territories, unless either sold or occupied, were freed of taxation for twenty years after the grant from the crown. Tolls were not to be reduced until net profits exceeded ten per cent on capital expended in construction.

The proposals were keenly criticized by the Hon. Edward Blake, the new leader of the opposition. The basis of the attack was that the company in return for a very small investment of their own money would receive enormous advantages and privileges. He valued the grant at from $111,800,000 to $162,000,000. He objected to the surrender

of the road to the company. 'By the old plan, if we built the railway we had it. By the new, we are to pay for it handsomely with a very large bonus to the builders, and then they are to own it.' He objected to the exemption of land from taxation as tending to retard settlement. Lands would be locked up and held by the company until their value was enhanced by actual settlers, while these settlers would have to bear excessive taxation to make up for the deficiency caused by the exemption. Large unoccupied tracts alternating with settlers' farms would check the progress of the country. He protested against the monopoly, and the practical absence of control over rates. It was true there would be nominal control as soon as the company earned ten per cent on its capital, but the capital would include the money grant from Canada, the land grant and the portions of railway already completed. The value of all this would be from $90,000,000 to $120,000,000. Hence the company might divide a profit of between nine and twelve millions a year before control would be effective. The government had virtually turned the farmers of the west over to the syndicate, who would take toll of the profits of their labour, and charge 'all the traffic would bear.'

During the Christmas holidays meetings were held by Blake and by Tupper in almost every constituency in Ontario and in some places in the Maritime Provinces. In January it was announced in opposition journals that a new syndicate had offered to build the railway for $22,000,000 and 22,000,000 acres of land, with no exemption from duties on material imported, no exemption from taxation and no monopoly, and with provision that the government might take possession of the line on terms to be settled by arbitration. In parliament Sir John Macdonald attacked the new proposal vigorously, describing it as a farce and a political plot, and an attempt to destroy the national character of the enterprise and make the Canadian prairies tributary to the United States. After a brief but strenuous debate, in which twenty-four amendments were rejected, the contract was ratified.

Public opinion favoured the project. National sentiment and the spirit of enterprise were gratified by the prospect of

1. Sir John A. Macdonald, Kingston, Ont.
2. Hon. E. T. Brooks, Sherbrooke, Que.
3. Hon. T. N. Gibbs, Oshawa, Ont.
4. Hon. J. B. Plumb, Niagara, Ont.
5. Hon. C. C. Colby, Stanstead, Que.
6. Hon. L. F. R. Masson, Terrebonne, Que.
7. Lieut.-Col. A. Pinsonneault, Laprairie, Que.
8. Thos. Farrow, North Huron, Ont.
9. G. T. Orton, M.D., Centre Wellington, Ont.
10. Wm. Wallace, South Norfolk, Ont.
11. M. P. Ryan, Montreal Centre, Que.
12. Alonzo Wright, Ottawa County, Que.
13. T. C. A. Desjardins, Hochelaga, Que.
14. Hon. J. H. Pope, Compton, Que.
15. Lachlin McCallum, Monck, Ont.
16. Dalton McCarthy, North Simcoe, Ont.
17. C. F. Ferguson, M.D., N. Leeds and Grenville, Ont.
18. Hilaire Hurteau, L'Assomption, Que.
19. Hon. J. A. Ouimet, Laval, Que.
20. Hon. J. C. Wade, Digby, N.S.
21. John Short, Gaspe, Que.
22. P. B. Benoit, Chambly, Que.
23. John White, East Hastings, Ont.
24. Hon. J. J. C. Abbott, Argenteuil, Que.
25. Hector Cameron, North Victoria, Ont.
26. Sir Hector Langevin, Three Rivers, Que.
27. Hon. John Costigan, Victoria, N.B.
28. Hon. J. G. Blanchet, M.D., Levis, Que.
29. Sir A. P. Caron, Quebec County, Que.
30. Hon. John G. Haggart, South Lanark, Ont.
31. Hon. Mackenzie Bowell, North Hastings, Ont.
32. Hon. P. White, North Renfrew, Ont.
33. Hon. G. A. Kirkpatrick, Frontenac, Ont.
34. D. F. Jones, South Leeds, Ont.
35. J. Domville, Kings, N.B.
36. Hon. Thos. McKay, Truro, N.S.
37. Duncan McMillan, East Middlesex, Ont.
38. J. B. Daoust, Two Mountains, Que.
39. Rufus Stephenson, Kent, Ont.
40. John Rochester, Carleton, Ont.
41. Hon. Wm. McDonald, Cape Breton, N.S.
42. D. O. Bourbeau, Drummond and Arthabaska, Que.
43. Hon. A. Bunster, Vancouver, B.C.
44. Hon. Amor de Cosmos, Victoria, B.C.
45. F. F. Rouleau, Dorchester, Que.
46. J. Ryan, Marquette, Man.
47. Arthur McQuade, South Victoria, Ont.
48. Hon. Thos. McGreevy, Quebec West, Que.
49. H. Montplaisir, Champlain, Que.
50. Firmin Dugas, Montcalm, Que.
51. E. O. Cuthbert, Berthier, Que.
52. Hon. John Schultz, Lisgar, Man.
53. Hon. P. Mitchell, Northumberland, N.B.
54. E. Cimon, Chicoutimi and Saguenay, Que.
55. F. X. O. Methot, Nicolet, Que.
56. Hon. J. A. Mousseau, Bagot, Que.
57. Hon. J. Bolduc, Beauce, Que
58. J. P. Lantier, Soulanges, Que.
59. J. M. Currier, City of Ottawa, Ont.
60. Sir Charles Tupper, Cumberland, N.S.

THE OLD GUARD DINNER, MAY 4, 1882

closer communication with that great western country that had been added to Canada. The boldness of the enterprise, the magnitude of the task undertaken by so young a country, added to its fascination. The objections urged by Blake and the opposition party were weighty, but the criticism was in advance of the times. Actual experience was required to enable the country to perceive the evils of the monopoly, of the exemption from taxation, of the locking up of large tracts of land from settlement, of the absence of effective regulation of rates. But with all these faults there was the unquestioned merit of energy showing itself in rapid construction, and in the pushing of the work on to completion long before the time agreed upon.

The Redistribution of 1882

In 1881 a census was taken. It showed a population of 4,342,810 divided as follows: Ontario 1,923,228, Quebec 1,359,027, Maritime Provinces 870,696, Manitoba 65,954, British Columbia 49,459, Territories 56,466. Under the British North America Act the representation of the provinces must be readjusted after each census, according to population.

The redistribution of constituencies following the census was described by the liberals, and severely attacked, as 'the gerrymander.' Its assigned object was to equalize the constituencies. It was attacked, first, as breaking through the municipal boundary lines, and, second, as designed to 'hive the Grits,' that is, to concentrate their vote so that they would be able to elect the smallest possible number of representatives. The simplest illustration is that of a county divided into three ridings, and giving on the whole a liberal majority. By skilful manipulation the greater part of this majority could be massed in one constituency, so that the other two would be conservative. The liberal contention was that not only was this done, but that where the effect could not be attained within the county, the county lines were broken and patches of county were added or taken away in order to complete the hiving process. They further believed

that the bill was aimed specially at Mackenzie, Cartwright and other leading liberals in Ontario.

Indignant protests were made, and some thirty amendments were moved. The tendency of the measure was very greatly to aggravate the bitterness of the political conflict. At the same time, its advantage to the conservatives was not unquestioned. The government obtained a large majority in Ontario in the elections of 1882, but this was in spite of the gerrymander rather than because of it. Ontario was conservative because of the National Policy, because of the Canadian Pacific Railway, because of the prosperity of the country and the feeling of life and hope inspired by rapid progress. Most of the liberal members at whom it was believed the gerrymander struck were elected, and there was a prevailing belief that this was due to chivalry aroused by injustice. Liberals, however, asserted that this feeling wore off, and that they felt the effects of the measure more keenly in 1887.

Though the dissolution of 1882 was premature, it had been expected. Both parties entered into the political battle with enthusiasm. Each was satisfied with its leadership and its policy. It was a period of conventions, of programmes and 'platforms,' of campaign songs. The conservatives relied upon the National Policy, upon the Canadian Pacific Railway, upon the prosperity of the country. Blake in his election address somewhat minimized the importance of the tariff issue. He said that it was necessary to raise a large revenue by import duties, and that as a result of this the manufacturers would enjoy an incidental protection that would be ample. 'Our adversaries wish to present to you as an issue the present tariff and absolute free trade. That is not the true issue. Free trade is, as I have repeatedly explained, for us impossible, and the issue is whether the present tariff is perfect or imperfect and unjust.' He repeated his criticism of the Pacific Railway project, condemned the gerrymander, and laid stress on provincial rights as involved in the contest between Ontario and the Dominion. The nature of these will be explained later on ; it will suffice to say here that they affected the area of the province to the extent of more than

one hundred thousand square miles, and that they affected also its legislative power, and the extent to which its laws were subject to disallowance. On these questions the liberals at Ottawa under Blake and the liberals in the Ontario legislature under Oliver Mowat were in close alliance. Many of them believed that Sir John Macdonald was attacking Ontario by design, with the intention of pleasing his Quebec followers. The belief is recorded in the campaign songs; one declared that

> The tricky Tory *Bleus*
> Who Sir John as catspaw use
> Cannot rule the roost in old Ontario.

Another, sung to the tune of 'Maryland,' contained this verse:

> The traitor's hand is on thy throat,
> Ontario, Ontario;
> Strike down that traitor with thy vote,
> Ontario, Ontario.

Sir John Macdonald paid great attention to these charges, and in speeches made a few weeks before the election he denied the right of Ontario to the land, minerals and timber in the disputed territory, and declared his intention of attacking the validity of the Ontario liquor licence laws.

The election resulted in another victory for the conservatives, with a majority about the same as in the previous election. The provincial elections were held in the following February and resulted in a fair majority for the Mowat government.

The Ontario Boundary[1]

A long-standing dispute as to the western and northern boundaries of Ontario was in 1878 referred to three arbitrators, Sir Francis Hincks for Canada, Chief Justice Harrison for Ontario, and Sir Edward Thornton as umpire. The award of the arbitrators, rendered in that year, fixed the western boundary west of the Lake of the Woods, or at longitude 95° 14′ 38″ west, and the northern boundary on the west at the Winnipeg River, 58½ miles north of the international

[1] See 'Boundary Disputes and Treaties' in this section.

boundary, and on the east at the mouth of the Albany River, 332 miles north of the height of land. Between these points the line followed the Albany and English Rivers with the intervening lakes. This award was satisfactory to Ontario. The Dominion had claimed that the western boundary was a line drawn north from the confluence of the Ohio and Mississippi Rivers. This line, being 89° 9′ 30″ west longitude, would have passed 6½ miles east of Port Arthur and west of Lake Nipigon—that is, about 300 miles farther east than Ontario claimed. The northern boundary, according to the Dominion, was the height of land dividing the waters flowing into Hudson Bay from those flowing into the Great Lakes. The difference in area, according to the generally accepted opinion, was between an Ontario of 116,782 and one of 260,862 square miles, but in the argument before the Privy Council in 1884 the figures were given as 101,733 and 200,000.

The award was accepted by Ontario, but not by Canada. The government of Canada contended that the commissioners had exceeded their power by fixing a conventional or arbitrary boundary. Sir Francis Hincks, one of the commissioners, afterwards denied this. The sole ground for this charge, he said, was that the line connecting the most north-easterly and most north-westerly points, being a natural boundary, was adopted for the sake of convenience. In 1880 the House of Commons refused to ratify the award and appointed a committee, which decided that the award did not truly define the bounds of Ontario.

In 1881 a new element was introduced into the dispute by the passage of a Dominion law extending the boundaries of Manitoba eastward. Its eastern boundary was declared to be identical with the westerly boundary of Ontario. The Hon. David Mills, liberal member for Bothwell and a high authority upon constitutional questions, warned the prime minister that he was provoking a contest between Ontario and Manitoba. He proposed that, pending the settlement, the boundary of Manitoba should not be extended eastward beyond the line fixed by the arbitration. This proposal was rejected. In the following session the House of Commons, at the instance of the government, resolved that the question

should be referred to the Supreme Court or the Judicial Committee of the Privy Council.

In the summer of 1883 the town of Rat Portage (now Kenora), lying at the north end of the Lake of the Woods and within the disputed territory, became the battleground of an extraordinary conflict. In the previous year the town had been incorporated by the Manitoba legislature and had a magistrate, a police force and a gaol under Manitoba jurisdiction. The people had voted in elections for both provinces. In July 1883 the Province of Ontario resolved to assert its jurisdiction, appointed a stipendiary magistrate and a force of constables and established a court-house and gaol. The Ontario and Manitoba constables fought and arrested each other. The Manitoba gaol was broken open and afterwards set on fire, and there was general disorder and ill-feeling. In September there was an election for the Ontario legislature in Algoma, which, according to the Ontario contention, included Rat Portage. It was reported that sixty men of the Winnipeg battery had been ordered to go to Rat Portage on polling day, and Arthur Sturgis Hardy, the provincial secretary of Ontario, then in Winnipeg, protested against this action.

After the election, which resulted in the return of a supporter of the Ontario government, there was peace for a time. In November hostilities were renewed, but at this time Oliver Mowat, who had been in England during the trouble, intervened and made a truce with Attorney-General Miller of Manitoba. Neither province abandoned its claims, but arrangements were made for the government of the disputed territory by joint authority. The question of the western boundary was referred to the Judicial Committee of the Privy Council, and in August 1884 the Judicial Committee of the Privy Council decided that the line fixed by the award between Ontario and Manitoba was substantially correct.

Sir John Macdonald contended that the land, timber and minerals in the territory belonged to the Dominion. ' Even if all the territory Mr Mowat asks for were awarded to Ontario,' he said in a speech in Toronto, on May 30, 1882, ' there is not one stick of timber, one acre of land or one lump

of lead, iron or gold that does not belong to the Dominion or to the people who have purchased from the Dominion government.'

Acting under this belief, the Dominion government dealt with the lands in the disputed territory, and issued timber licences covering a million acres. A test case was made by an action brought against the St Catharines Milling and Lumbering Co. The company pleaded the Dominion licence, and contended that the lands and lumber were the property of Canada, which had acquired the Indian title. The Judicial Committee of the Privy Council, agreeing with the three Canadian courts, decided that the land, timber and minerals belonged to the Province of Ontario.

The Streams Bill

Another measure which played a large part in the campaign literature of the early eighties was the Rivers and Streams Bill. In 1881 the Ontario legislature passed an act for protecting the public interest in rivers, streams and creeks. It provided that all persons should have during freshets the right to float sawlogs, etc., down rivers and streams. Improvers were to be paid tolls for the use of improvements, but not to have exclusive rights on streams. The bill was retroactive, and it was stated that it affected the pending suit of Caldwell and McLaren. This suit had arisen thus: Peter McLaren owned limits on the banks of the Mississippi and other streams in Eastern Ontario and at his own cost had made the waters available for floating sawlogs. William C. Caldwell claimed the right to use these improvements. McLaren obtained from Vice-Chancellor Proudfoot an injunction against such use. The Ontario Court of Appeal reversed Vice-Chancellor Proudfoot's decision, but it was restored by the Supreme Court. The contest was continued in the political arena as well as in the courts. The bill was disallowed by the Dominion government in 1881. It was twice again enacted and twice again disallowed. Finally, in 1884, the Privy Council reversed the judgment of the Supreme Court in Caldwell *v.* McLaren. The decision was regarded as upholding the Ontario con-

tention, and the bill, having been re-enacted with some amendments, was not again disallowed.

The Licence Law

The provinces and the Dominion fought another battle over the regulation of the liquor traffic. In 1882 a Mr Russell, of Fredericton, N.B., appealed from a conviction under the Canada Temperance Act (the Scott Act), a measure under which prohibition could be enforced in a locality by a popular vote. The power of the Dominion parliament to enact the law, which was called in question in these proceedings, was affirmed by the Judicial Committee of the Privy Council. It was decided that the Canada Temperance Act was valid as maintaining the peace, order and good government of Canada.

From this decision Sir John Macdonald drew the inference that the Crooks Act, regulating the issue of licences in Ontario, was invalid, and that the Dominion government could control the traffic. In the session of 1883 he proceeded to enact a liquor licence law for the Dominion. Edward Blake argued that the decision did not invalidate the provincial laws, and hence he and other liberals declined to act on a special committee appointed to frame a bill. The committee reported a bill drafted by D'Alton M^{c}Carthy, a distinguished lawyer and prominent conservative, establishing a Dominion system of hotel, shop, vessel and wholesale licences. The bill became law under strong protest from the opposition.

The situation was changed by another decision, in the case of Hodge *v.* the Queen. Here the validity of the Crooks Act was directly attacked. In May 1883 the Privy Council decided that the powers conferred by the Liquor Licence Act were police and municipal regulations, that they did not interfere with the regulation of trade and commerce, and did not conflict with the Canada Temperance Act. It was decided that the provincial legislatures were, within their own powers, supreme, like the imperial or Dominion parliament.

This decision validated the provincial law, but it was

questioned whether it voided the Dominion Licence Act. The Dominion government appointed licence commissioners and took steps to operate the act. Finally, the question of the constitutionality of the act was referred to the Supreme Court of Canada. The Supreme Court decided that the acts were *ultra vires* of the Dominion parliament except as to vessel and wholesale licences, and except as to carrying out the Canada Temperance Act. The Privy Council on appeal decided that both the M^c^Carthy Act and the amending act of 1884 were *ultra vires*. The law was afterwards repealed.

The Franchise

By the British North America Act it was provided that the franchises of the various provinces should be used in Dominion elections until otherwise provided by the parliament of Canada. The provincial franchises were so used until 1885. In 1870, 1883 and 1884 bills providing for a Dominion franchise were introduced and withdrawn after passing through several stages.

When a franchise bill was introduced in April 1885, the end of the session was supposed to be at hand, but the legislation was pushed forward with such vigour and resisted so resolutely that the session was prolonged for three months.

The main provisions of the bill were (1) uniform suffrage ; (2) low property qualification ; (3) federal officers to prepare and revise voters' lists ; (4) enfranchisement of Indians having the necessary property qualifications.

Sir John Macdonald also proposed that single women should have votes, but this was not pressed, although it lent itself to the prolonged and obstructive discussion which followed. He argued that there should be uniformity of suffrage throughout Canada. In a private letter to a British statesman he said that ' the provinces had begun to tinker at their electoral franchises, and in some cases legislated with the direct object of affecting the returns of the Federal Parliament ; so that the independence of Parliament was threatened to such a degree that it had to be dealt with.'

At this time the legislatures of Ontario, Quebec, Nova Scotia and New Brunswick were under liberal control.

The liberals took strong ground in favour of retaining the provincial franchises, and even contended that provincial rights and the federal principle were violated by the bill. They objected also to the enfranchisement of the Indians, who as wards of the government would not be free, and to the revision of lists by revising barristers, who as government officials might show favour to government candidates.

The liberals regarded the fight as one of life and death, and openly resorted to obstruction. They divided into relays, so that some might sleep while others continued the debate. Long documents, magazine articles dealing with woman suffrage and other subjects were read. There was also much good debating on the merits of the bill ; important amendments were suggested and some were made. The enfranchisement of Indians living west of Ontario was prevented. Income and property qualifications were reduced. Wage earners were enfranchised. An appeal from revising barristers to judges was given. Uniformity of franchise was abandoned on account of strong opposition from Quebec, whose representatives preferred a franchise more restricted than that of the bill.

To anticipate a little, it may be mentioned here that the Dominion Franchise Act was repealed soon after the liberals came into power, and the provincial franchises were again used.

The North-West Rebellion [1]

In the spring of 1885 Canada was startled by the news that a formidable half-breed and Indian rising had occurred in the North-West Territory, and that a force of mounted police and volunteers had been defeated by the rebels. The trouble had been brewing for several years. The scene of the rebellion was near the junction of the North and South Saskatchewan rivers. Some of the inhabitants had moved westward from the Red River Settlement after the insurrection of 1870. Some had been there from an earlier period. Like the Métis of the Red River they were hunters and fishers as well as

[1] See ' Defence, 1812-1912 ' in this section.

farmers ; they liked to have their farms fronting on the river and running back over a long strip of land. They disliked and distrusted the new civilization, and were especially fearful of any change or uncertainty as to their land tenure. They asked for the same treatment as had been accorded to the Manitoba half-breeds. These and other requests were made to the Dominion government at various times between 1875 and 1885, when the rebellion broke out. At one time it appeared as if the matter would be amicably settled. Sir John Macdonald, on taking charge of the Indian department in 1878, instructed Colonel Dennis to investigate the Métis claims. Colonel Dennis supported these claims, and represented that if conciliated the half-breeds would aid the government in dealing with the Indians. Similar representations were made by the Anglican bishop, John McLean, and by the Roman Catholic archbishop, Alexandre A. Taché.

In 1879 an act was passed authorizing the government to make land grants to the Métis. After this there appears to have been no energetic administrative action. In 1882 there was a land boom in the West and a large amount of speculative dealing in land, and the Métis became fearful that their holdings would be disturbed. The situation grew more and more critical until 1884, when the Métis invited Riel, whose term of banishment had expired, to return to the country from the United States.

When, at a later period, the government at Ottawa was charged with neglect, the answer was that the real grievances were not great, that many of the half-breeds had already received land in Manitoba, and that the rebellion was fomented by disappointed white speculators. After the charge and the defence are examined, the impression remains that there was a lack of breadth and foresight in dealing with the situation. No one seems to have realized that there was danger of an insurrection similar to that of 1870, with the added horror of an Indian rising, and that in comparison with this danger the allowance even of some extravagant claims to land would have been of trifling importance. The dispute, as Colonel Denison of Toronto afterwards pointed out, was about a few acres of land in a country where tens of millions of acres were available

and where the government was begging for settlers. Too much stress was laid on the letter of the law and the regulations ; too little on the large political aspects of the question.

Riel, who had already visited his old home in the Red River Settlement in the summer of 1883, accepted the invitation extended to him. At a meeting held by the Métis at St Laurent in September 1884, a bill of rights was formulated with seven requests : (1) subdivision of provinces of North-West Territory ; (2) half-breeds to receive the same grant as Manitoba half-breeds ; (3) patents to be issued at once to those in possession ; (4) sale of half a million acres of Dominion land, the proceeds to be applied to the establishment of schools, hospitals, etc., and to give the poorer half-breeds seed, grain and farm implements ; (5) reservation of a hundred townships of swamp hay land for distribution among children of half-breeds during one hundred and twenty years ; (6) grants of at least $1000 in each case for the support of a nunnery in every settlement ; (7) better provision for the support of Indians.

The requests for land grants to the half-breeds and the issue of patents to persons in possession were supported by the Roman Catholic Bishop of Prince Albert and by most of the English-speaking settlers. Some of the other requests were extravagant, and seemed to be inspired by Riel rather than based upon genuine grievances and needs. The clause asking for better support for the Indians, it is suggested, was inserted in order to obtain the aid of the Indians in the rebellion.

During the winter of 1884-85 the situation grew worse, and in March it became so threatening that officers of the Mounted Police gave warning that a rebellion might break out at any time and that the Indians would join the half-breeds. On March 17 the Métis met at St Laurent, formed a government with Riel as president and Gabriel Dumont as adjutant-general. The provisional government seized stores, imprisoned the Indian agent and telegraph operators, and cut the telegraph wires. The Métis were joined by a considerable body of Indians. On March 25 they captured the Duck Lake post with Indian and government stores. In attempting to recover this post a detachment of Mounted Police and a

company of Prince Albert volunteers were defeated by Indians and half-breeds. The defeat of the Mounted Police especially had a bad moral effect, depriving that body of the prestige which it had formerly held among the Indians. The disaster was communicated to Ottawa and occasioned wild excitement throughout Canada. There was a general call to arms, and a force was speedily organized by General Middleton, commanding the militia. It was some time before this relief could arrive, and in the meantime the white settlers of the Saskatchewan valley were in deadly fear of attacks from the Indians, of whom there were thirty thousand in the West. This fear was realized. The fort at Battleford was attacked and the stores were plundered. A farm instructor named Payne was murdered by Stoney Indians, and at Frog Lake, an Indian station and mission, nine white men were murdered by Indians from Big Bear's camp. Along the North Saskatchewan the settlers abandoned their homes, which were plundered and burned by Indians, and fled for safety to Edmonton or to stations on the Canadian Pacific Railway.

The troops at Winnipeg were hurried forward at once, but the transportation of the forces from Eastern Canada involved much difficulty. In the section of the Canadian Pacific Railway north of Lake Superior there was a stretch of about one hundred miles over which troops had to be carried on flat cars, and for seventy or eighty miles they journeyed on sleighs. The weather in March and April was very cold, and the men suffered severe hardships. Within a month a force of 3000 men was transported from Eastern Canada, the greater portion 1800 miles, and the remainder 2500 miles, and about 1500 came from Manitoba and the North-West. These, with the Mounted Police, formed Middleton's forces. From Winnipeg westward the Canadian Pacific Railway was used as the base of operations. Middleton moved north from Qu'Appelle to Batoche, Riel's headquarters ; Colonel Otter's force to Battleford, and General Strange's to Edmonton. After long and toilsome marches all encountered the enemy. The campaign, though brief, was not one of unchecked success for the government forces. Otter was repulsed at Cut Knife Hill by Poundmaker's Indians, and Middleton experienced

CHIEF POUNDMAKER

From the painting by Edmund Morris

strong opposition at Fish Creek and had great difficulty in driving the rebels from the position chosen by the brave and skilful Gabriel Dumont. But Middleton's victory at Batoche broke the neck of the rebellion. On May 13 the rebels crowded into his camp to surrender, and on the 15th Riel was captured by two scouts. He was unarmed, and on giving himself up produced a letter from General Middleton, offering him protection until his case had been considered by the government. Poundmaker surrendered, Big Bear escaped, and the country once more became quiet and secure. The struggle was now removed from the field of battle to the courts and politics.

Riel was tried at Regina before Hugh Richardson, stipendiary magistrate, Henry le Jeune, Associate Justice, and a jury of six persons. An objection to the jurisdiction of the court was overruled. Stress was laid by the prosecution on the charge that Riel had incited the Indians to rise. Evidence to the effect that the rebellion had been provoked by misgovernment and neglect was rejected. The main defence was insanity. On this point Dr Jukes, surgeon of the Mounted Police, said that Riel was sane and accountable for his actions, but had delusions as to 'Divine Mysteries.' Dr Valade of Ottawa said that he was sensible except for political and religious delusions. Dr Wallace of Hamilton was satisfied of his sanity. Dr Ray of Beauport Asylum said that Riel was there nineteen months in 1877 and 1878, and he was satisfied his insanity had returned. Dr Daniel Clark, superintendent of Toronto Asylum, in a letter to the Toronto *Globe*, said he had spoken with half-breeds who declared that Riel was sane until after the Duck Lake fight. Then he acted like a fanatic, doing no fighting, but running about with a crucifix and calling upon the Trinity for aid. Dr Clark concluded that he was insane, but that because he had been the indirect cause of a deplorable outbreak, his mental condition became of secondary importance.

Riel addressed the court after his counsel, repudiating the plea of insanity, but claiming that he was the 'prophet of the new world.' He was found guilty and sentenced to be hanged on September 8. The judgment was confirmed by the

Queen's Bench of Manitoba, and an attempt to appeal to the Privy Council failed. Several delays were granted for Riel's examinations by experts as to sanity, but on November 16 the sentence was carried out at Regina. Riel recanted all his pretensions to religious leadership and died an orthodox Roman Catholic. Eight Indians who took part in the Frog Lake massacre and other murders were also executed.

Two days before Riel's execution a telegram had been sent by a number of Quebec members of parliament of both political parties to Sir John Macdonald, asking that the execution be not carried out. The execution was the signal for a formidable agitation in Quebec. On the following Sunday a huge meeting in the Champ de Mars, Montreal, was addressed by Honoré Mercier, leader of the Quebec nationalists, Wilfrid Laurier, and others of both political parties. The resolutions passed at this meeting enlarged on the grievances leading up to the rebellion; declared that civilized nations had abolished capital punishment for political offences; pointed out that Riel had been recommended to mercy by a jury, not one of whom was of the French race; claimed that his surrender to Middleton was conditional on clemency, and charged the government with sacrificing Riel to the hatred of fanatics, for reasons of political expediency. The storm raged with fury and swept Mercier into power as head of the provincial government. There was a strong counter-agitation in Ontario, and racial feeling ran high in both provinces.

The government lost some ground in Quebec, but the situation was also embarrassing for the opposition. There was a strong case against the government on the ground that neglect had caused the rebellion. But this issue was subordinated to that of the execution of Riel, and the liberals found it impossible to separate condemnation of the execution from condemnation of the neglect which caused the rebellion. Ontario had been angered by the escape of Riel after the slaying of Scott in 1870, and was determined that he should not escape a second time. Broadly speaking, Riel was executed for the slaying of Scott, as well as for the part played by him in the second rebellion.

On January 4, 1886, Edward Blake, who had been in

Europe during the trial and execution, made a speech in London, Ontario, in which he said that he would not construct a platform out of the Regina scaffold, but intimated that he would raise the question of Riel's mental condition.

When the house assembled in 1886, Auguste Landry, a supporter of the government, at that time member for Montmagny, afterwards a senator, and appointed speaker of the Senate in 1911, moved a resolution condemning the execution. Immediately afterwards Hector Langevin, minister of Public Works, moved the previous question. It was believed that there was an arrangement between the two, and it is certain that an important strategic advantage was won for the government by the exclusion of amendments. The liberals were thus prevented from bringing up the question of the government's responsibility for the rebellion. A considerable number of liberals, including Mackenzie and Cartwright, voted against the Landry resolution, and the government obtained a majority of nearly a hundred, thus emerging from a difficult situation with the appearance of a triumph.

Edward Blake and Wilfrid Laurier voted for the Landry amendment, and in their speeches challenged the justice of the execution. Laurier held that Riel was insane, and quoted many historical examples against execution for political offences. He maintained that Riel was in reality executed, not for his part in the rebellion of 1885, but for the murder of Scott fifteen years before. Blake considered at great length the question of insanity and responsibility. He held that Riel was not responsible. He took the ground that the government in capital cases exercises the discretion which in other cases is exercised by the judge at the trial, and that this discretion should have prevented the execution. The defence fell mainly upon John S. D. Thompson (afterwards Sir John), the new minister of Justice, who by his argument raised himself at a bound to the front rank of parliamentary debaters. He laid much stress on the necessity for the deterrent influence of capital punishment as a protection to settlers from Indian attacks.

The session of 1886 was the last of the parliament. In the

winter of 1886-87 there was a strenuous campaign. In the midst of the Dominion fight Oliver Mowat suddenly had the legislature in Ontario dissolved, and was returned with a majority of two to one, and shortly afterwards Mercier carried Quebec and became its prime minister. It was supposed by some that these victories presaged a triumph in the federal field; but there is reason to believe that they had the opposite effect, allowing hostility to the federal government to break its force in local contests. At any rate the government was saved. It came back to power with a diminished majority, but after the election most of the Quebec conservatives who had bolted on the Riel question returned to their allegiance.

Soon after the election it became known that Blake was desirous of resigning the leadership of the opposition. He was re-elected leader and strongly pressed to retain the position, but ill-health and insomnia rendered this impossible, and on June 2, 1887, his resignation took effect. Three names were mentioned for the succession, Sir Richard Cartwright, the Hon. Wilfrid Laurier and the Hon. David Mills. It was known that Blake's advice was to appoint Laurier, and on June 7 he was nominated by Cartwright and Mills and elected unanimously. A contemporary writer expressed a doubt whether Laurier had, in addition to eloquence and high character, the skill and firmness necessary for leadership. This writer gave expression to a common but very erroneous notion that Wilfrid Laurier was a dreamy scholar, lacking the sterner qualities necessary for the political battle.

Jesuit Estates Case

The embers of race and religious controversy which had flamed out in the Riel agitation were rekindled by the Jesuit Estates Case. The chief actor in the drama was Honoré Mercier, premier of Quebec, who had played so prominent a part in the Riel agitation. When the Jesuit order was suppressed by the Pope in 1773, their estates in Quebec reverted to the crown and were used for maintaining public instruction. At Confederation they passed to the Province of Quebec.

The Roman Catholic Church held that the estates were the property of the diocese in which they lay. When the Jesuits were reinstated and incorporated they also put in a claim to the estates.

These claims formed a cloud on the title and prevented the sale of the property. In 1888 Mercier resolved to settle the question. His act authorized the payment of $400,000 in lieu of the confiscated land. As there were claims by different bodies within the Church, it was provided that the Pope should be asked to ratify the settlement and decide how the money should be allotted. The division was made among the Jesuits, the archbishops and bishops of the province, and the Catholic University of Laval. At the same time the grant to Protestant schools was increased by $60,000. In Quebec the settlement was satisfactory and was not strongly opposed even by Protestants.

In Ontario, however, there was an agitation against the measure, due to dislike and distrust of the Jesuits and also to jealousy of papal intervention. The explanation that the Pope was called in, not as an authority usurping political power, but as an arbitrator or mediator among various bodies in his own church, did not allay suspicion. In the House of Commons, Colonel William E. O'Brien, member for Muskoka, moved for the disallowance of the bill, backing his resolution by a powerful speech. D'Alton McCarthy, who had a large popular following in Ontario, spoke on the same side, while the defence fell to the minister of Justice, Sir John Thompson, who, as a Catholic, had a somewhat delicate part to play. The two political parties were averse to raising the question, and the consequence was that only thirteen votes were recorded for the motion. The majority justified their action mainly upon the ground of provincial rights. They said it was Quebec's business.

But the small vote for disallowance did not represent popular feeling. In Ontario there was an agitation against clerical privilege, and the Equal Rights Association was formed to express that protest. Failing to procure the disallowance of the Jesuit Estates Act, it plunged into provincial politics, and became a source of hostility to the Mowat government.

D'Alton McCarthy grew more and more active as a Protestant leader. In the House of Commons he made a vain attempt to have the use of the French language forbidden in official proceedings in the North-West Territory. Finally he communicated his enthusiasm to Joseph Martin, attorney-general for Manitoba, and at a meeting in Portage la Prairie, in 1889, addressed by McCarthy and Martin, the latter announced that he would establish a national and non-sectarian school system in Manitoba. He did afterwards introduce legislation abolishing separate schools, and thereby caused a legal and political struggle extending over several years. Here it will be necessary to leave the question and turn to the controversy which was the principal issue in the election of 1891.

Reciprocity

The revival of the question of reciprocity was partly due to the termination of the arrangement made under the Washington Treaty, giving the Americans twelve years' use of the Canadian fisheries. The dispute over the fisheries was renewed. American vessels were seized by Canadian cruisers and a dangerous situation arose. Congress in 1887 passed a retaliatory act, empowering the president, if American vessels were harassed by Canada, to close the ports and waters of the United States against Canadian products and vessels. The president forbore to use this power, and arranged with Great Britain for the appointment of a commission. The British commissioners were Sir Lionel Sackville-West, Sir Charles Tupper and Joseph Chamberlain. The treaty privileges were extended to American vessels until the close of the season.

In a correspondence between Thomas F. Bayard, the American secretary of state, and Sir Charles Tupper, both declared in favour of straightforward, liberal and statesmanlike treatment of the entire commercial relations of the two countries. But when Sir Charles Tupper broached the subject of freer commercial intercourse, the American commissioners said that Congress alone could remove duties, and that they would not purchase, with reciprocity, immunity

from an unneighbourly policy as to the fisheries, adopted for the very purpose of forcing reciprocity upon the United States.

The draft treaty contained no provision for freer trade, but there was an understanding that an attempt would be made to obtain the consent of the Congress of the United States and the parliament of Canada to reciprocity in fish and fish products. The nature of the provision as to fishing need not be here detailed, for the treaty met its death in the Senate of the United States.

Reciprocity was not at first a party issue. Its most distinguished advocate was Goldwin Smith, who belonged to neither party and was a keen critic of the party system. Its most active worker, Erastus Wiman, was a man whose party affiliations were not conspicuous. He was a native of Canada, but had made his chief headway in business in the United States, though he had never become a citizen of that country. Other leaders were Henry W. Darling, a banker, president of the Toronto Board of Trade, and Valancey E. Fuller, one of the new school of scientific farmers, and president of the Council of Farmers' Institutes. Through these institutes a large amount of work for the cause was done. The Toronto Board of Trade discussed the question at several meetings. The result was a declaration for enlarged commercial relations with the United States, but against commercial union and discrimination against Great Britain.

Eventually, however, the question became one of party politics. At Ingersoll, Ontario, on October 12, 1887, Sir Richard Cartwright, the chief fiscal authority of the liberal party, declared strongly for commercial union. He admitted that there was a risk, but said that there was a choice of risks, and that there was more danger of annexation through the continuance of existing conditions than through commercial union. Wilfrid Laurier, the new leader of the party, expressed himself more cautiously. In time the name 'unrestricted reciprocity' was substituted for 'commercial union' by the liberals, who disliked the word 'union' and its annexationist associations. James D. Edgar, M.P., a leading liberal, contended that full reciprocity could be obtained without

abolishing the custom-houses or assimilating the tariffs, and this position was held by many liberals.

Free trade with the United States was endorsed by an interprovincial conference held at Quebec in the autumn of 1887, composed of premiers and members of provincial governments, including Mowat and Hardy of Ontario, Mercier of Quebec, Fielding of Nova Scotia, Blair of New Brunswick, and Norquay of Manitoba. The resolution was framed by Oliver Mowat, who advocated freer trade relations, but was always emphatic in opposition to political union.

A counter-movement was now organized by such leading imperialists as Colonel Denison, D'Alton McCarthy and Principal Grant of Queen's College. Up to this point the advocacy of imperialism had been regarded as somewhat visionary, but the fight against commercial union gave it a tangible object, and from this period dates the active imperialist movement which afterwards made much headway in Canada. Joseph Chamberlain, returning from the negotiations at Washington, addressed the Toronto Board of Trade and condemned commercial union as a sacrifice of fiscal freedom, perhaps paving the way for the loss of political independence.

In 1888 the question was considered in the liberal caucus at Ottawa. Commercial union was rejected at this meeting, but the resolution which, after consultation, was introduced by Sir Richard Cartwright, took advanced ground. It declared for the largest possible freedom of commercial intercourse between the United States and Canada ; for the free exchange of all articles produced or manufactured in the two countries ; and for the opening of negotiations for full and unrestricted reciprocity of trade. This resolution was met with a direct negative and voted down by the supporters of the government, and the same fate befell similar resolutions introduced in 1889. Issue was now joined between the parties, and the question was discussed from every point of view, commercial and national.

At this point it may be convenient to describe the position of the country and the state of public feeling in relation to reciprocity. There was a condition of depression and dis-

appointment, not unlike that which prevailed during the Mackenzie administration, and lending itself to agitation for change. The increase in population had been disappointingly small. The building of the Canadian Pacific Railway, from which so much had been hoped, had not been followed by rapid settlement of the West. Added to this, there was in the liberal party intense bitterness against the methods by which Sir John Macdonald had kept himself in power. The party was ready for bold measures.

Charges of annexation tendencies were made against the advocates of reciprocity. There were some annexationists on that side. Many others were strongly British and hostile to continental union. Between these there was a large body of men who were despondent, who felt that access to the American markets was absolutely necessary for Canadian prosperity, and who were willing to accept the consequences of enlarged freedom of trade, whatever they might be. Some of them expressed their confidence that political union would not be promoted and might be checked by freedom of trade. But freedom of trade, with all its risks, whether great or small, they said the country must have.

The government, while definitely committed to opposition to the advanced measure of reciprocity proposed by the liberals, was impressed by the strength of the desire for access to the American market, and was prepared to concede limited reciprocity for that purpose. In January 1891 it announced that negotiations for reciprocity with the United States were in progress. At the Albany Club in Toronto Sir John Macdonald said, ' While we are going to stand by our national policy, it is the fact that every measure of reciprocal trade we have got from our neighbours has been got by the conservatives.' He instanced the Elgin Treaty of 1854 and the Treaty of Washington of 1871.

In February 1891 parliament was dissolved, and at the same time the nature of the reciprocity proposals was described. They included the renewal of the treaty of 1854 with necessary changes, provisions as to fisheries, coasting, wrecking, and the boundary between Canada and Alaska. The Toronto *Empire*, then the chief government organ,

expressed its belief that the people would support a fair treaty without the surrender involved in the liberal proposals ; without vassalage to the United States, discrimination against Great Britain, and direct taxation.

There was a dispute or a misunderstanding between the American and Canadian governments as to the nature of these negotiations, which is now of no great importance. The essential fact is that it was established that the United States would not consider reciprocity if confined to natural products. This helped to clear the decks for action ; it was unrestricted reciprocity on one side, unqualified opposition on the other. The appeals to loyalty became more insistent. Charges of annexation proclivities were hurled at the liberal party. Liberals retorted that conservatives were trading upon loyalty to bolster up the protective system. Sir John Macdonald's address to the electors was fervently loyal. ' As for myself,' he said, ' my course is clear. A British subject I was born, and a British subject I will die. With my utmost effort, with my latest breath, will I oppose the veiled treason which attempts by sordid means and mercenary proffers to lure our people from their allegiance.'

Wilfrid Laurier, the leader of the opposition, in his reply to this address, said that the interests of a colony could not always be identical with the interests of the motherland. The development of national life in the colony must some day cause a clashing of interests, and if called upon to make his choice, he would stand by his native land. He denied that reciprocity would lead to annexation or that it was necessary to assimilate the Canadian to the American tariff.

At a time when the political bearing of unrestricted reciprocity and its probable influence upon the political relations of Canada and the United States were subjects of discussion and anxious thought, much importance was attached to the position taken by Oliver Mowat, the leader of the provincial government of Ontario. His long experience, his sagacity, his attachment to British connection, his frequent assertion of the superiority of British to American institutions gave weight to his advocacy of reciprocity, and to his assurance that it involved no danger to the life of the

nation or to the integrity of the Empire. He declared emphatically that he had no difficulty in reconciling unrestricted reciprocity with British connection. 'Our opponents,' he said, 'are afraid of being Yankeefied if they get unrestricted reciprocity. We are not afraid of being Yankeefied by any such thing. I am quite sure that the reformers will not be Yankeefied by unrestricted reciprocity, and I hope conservatives will not be Yankeefied by any such means.'

The election was held on March 5, 1891. In Ontario, the stronghold of British sentiment, the conservatives obtained only two or three more constituencies than their opponents. In Quebec the liberals were in the majority, and the government would have been defeated had it not been for the sweeping majority they obtained in the Maritime Provinces and the West.

After the election there was a notable addition to the controversy in the form of a letter from the Hon. Edward Blake to his late constituents of West Durham, where he had declined renomination. This letter, which had been written a month before the election, was an exhaustive analysis of unrestricted reciprocity, together with a gloomy account of the financial and political position of the country. First, he said that a moderate revenue tariff approximating to free trade and a liberal, though limited, reciprocity with the United States would have been the best arrangement. The United States, however, would not agree to limited reciprocity. What was best was not now attainable. Next, he described the failure of the 'National Policy.' Its real tendency, he said, was towards disintegration and annexation. It had left Canada with a small population, a scanty immigration, and 'a North-west empty still'; with lowered standards of public virtue and a deathlike apathy in public opinion; 'with our hands tied, our future compromised, and in such a plight that whether we stand or move we must run some risks, which else we might have either declined, or encountered with greater promise of success.' He declared that there was no reasonable prospect of Great Britain imposing taxes on food, with preferences for the colonies. Such a suggestion coming from Canada would alienate British feeling, even though

accompanied by the sop of a delusive differential duty in favour of British manufactures.

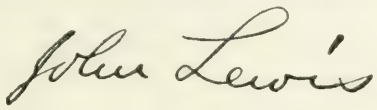
Unrestricted reciprocity with the United States would give us in practice the blessing of a large measure of free trade. It would give us men, money and markets. But any practical plan of unrestricted reciprocity involved differential duties and substantial assimilation of tariffs. Unrestricted reciprocity without assimilation of tariffs was an empty dream. There would be a loss of revenue which could not be made up except by pooling and dividing the duties collected by both countries. The States could not, without destroying their industrial system, admit free our woollen or iron manufactures, the produce of wool freely imported by us ; nor could we, without destroying our industrial system, levy on raw material higher duties than those laid by the States.

Hence unrestricted reciprocity was in Blake's view difficult to distinguish from commercial union, involving a common tariff, the abolition of custom-houses along the border, and division of seaboard custom duties between the two countries. The tendency of such a plan would be towards political union, by reason of community of interest, intermingling of population, intimate business and social connection with the United States, and of the greater isolation and divergency from Britain, and especially through apprehensions as to the termination of the treaty. He thought that commercial union should come, if at all, as an incident, or at any rate as a well-understood precursor of political union. 'Then so believing, believing that the decision of the trade question involves that of the constitutional issue, for which you are unprepared, and with which you do not even conceive yourselves to be dealing ; how can I properly recommend you now to decide on commercial union ?'

There were various interpretations of the letter. The *Empire* regarded it as a protest against disloyalty. The *Globe* considered that it was a declaration for political union. It does not now appear to be a declaration for or against that policy. Its object was to show that unrestricted reciprocity led, not by intention, but naturally and inevitably, to political union. The chain of consequences was completed by his

identification of unrestricted reciprocity with commercial union. As the picture of the conditions then prevailing in Canada was exceedingly dark, and as the most desirable policy, revenue tariff with reciprocity, was declared to be impossible, every door but annexation seemed to be closed. But in a few days Blake issued an explanation that political union, 'though becoming our probable, is by no means our ideal, or as yet our inevitable future.'

Although Blake did not denounce the policy of the liberal party as treasonable, the omission was amply supplied by the conservative press, and the letter was used with telling effect in the many by-elections which followed the general election. In these elections the narrow majority of the government was converted into a decisive one. Even the death of Sir John Macdonald did not interrupt the flow of conservative victory.



FOUR PREMIERS

1891-1896

FOUR PREMIERS, 1891-1896

I

SIR JOHN ABBOTT

IN a midwinter campaign of 1891 Sir John Macdonald had undertaken work far beyond his strength, and addressed meetings while seriously indisposed. He took to his bed on election day, and was sleeping the sleep of exhaustion before half the returns were in, and while the fate of the government was still undecided. During the spring he remained very weak. On May 12 his secretary, Joseph Pope, noticed that his utterance was imperfect, a warning of the paralysis to which he was to succumb. About the end of May he became unconscious, and remained so for eight days until his death, which occurred on the night of Saturday, June 6, 1891. His last appearance in the house was on May 22, when he defended his action in bringing Sir Charles Tupper, the high commissioner for Canada, from London to take part in the elections.

Macdonald was succeeded after a brief interval by Sir John Abbott, a distinguished Montreal advocate and leader of the Senate. Abbott was a man of urbane manners and great astuteness, and he gave the impression of being the confidential family lawyer of the conservative party. He was in his youth one of the signers of the annexation manifesto of 1849, and in political controversy was sometimes reminded of that error. But his good temper and dignity kept him out of quarrels, and gave him immunity from severe attacks.

After the brief truce following the death of Macdonald the party fight was renewed with increased vigour. The session of 1891 obtained the name of the Scandal Session, from

the number of charges made against the government. The heaviest attack was led by J. Israel Tarte, a brilliant Quebec journalist, who had been a supporter of Sir John Macdonald. Tarte alleged that in the general election of 1887 a corruption fund was raised for the purpose of carrying a third of the seats in Quebec; that the money was obtained by subscriptions from contractors having dealings with the department of Public Works; and that Thomas McGreevy, M.P., acted as intermediary between the contractors and the minister, Sir Hector Langevin.

The leadership of the House of Commons had passed to Sir John Thompson, the premier being in the Senate. Thompson dealt severely with offending members of his own party. The charges were referred to the committee on privileges and elections, and the majority acquitted Sir Hector Langevin of blame. But in August he resigned from the ministry. McGreevy was expelled from parliament and was afterwards imprisoned.

At the same time conservatives in the Senate were forcing an inquiry into serious charges of corruption against Mercier and the liberal government of Quebec. The right of the Senate to try a provincial question was disputed, but in vain. The result of the investigation was damaging, and to some extent offset the attack on the federal government. The Mercier government was dismissed by Lieutenant-Governor Angers. In the election which followed Mercier suffered a severe defeat and his strange public career soon came to a tragic end.

II

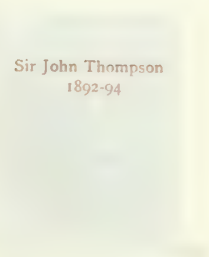
SIR JOHN THOMPSON

ON December 5, 1892, Abbott resigned the premiership on account of ill-health, and was succeeded by Sir John Thompson, who proved himself a strong and dignified, though somewhat severe chief. It became his duty to take part in an important matter of international relations. In 1893 there was an arbitration to settle the claim made by the

PRIME MINISTERS, 1867-1912

Alexander Mackenzie
1873-78

Sir John Abbott
1891-92

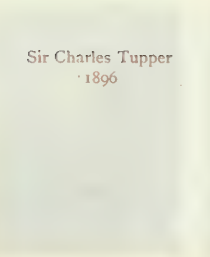


Sir John Thompson
1892-94

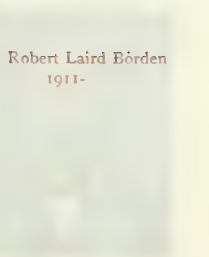
Sir Wilfrid Laurier
1896-1911

Sir John A. Macdonald
1867-73, 1878-91

Sir Mackenzie Bowell
1894-96



Sir Charles Tupper
1896



Robert Laird Borden
1911-

United States to exclusive rights of sealing in Bering Sea. The matter attracted notice in 1886, when Canadian schooners engaged in seal-hunting sixty miles from land were seized, taken to an Alaskan port, and confiscated. Further seizures were made at intervals until 1890, when the British government made a strong protest against interference with British vessels outside the territorial waters of the United States, and declared that it would hold the government of the United States responsible for the consequences of acts contrary to international law. The seizures then ceased, and negotiations were reopened for reference to arbitration. Two arbitrators were selected by Great Britain, two by the United States, and one each by France, Italy, and Norway and Sweden. The British arbitrators were Lord Hannen, a distinguished English judge, and Sir John Thompson.

On August 15, 1893, the tribunal delivered its award, declaring that the United States had no right of property in seals caught outside the territorial limit of three miles from their coasts, and at the same time establishing, *quoad* Great Britain and the United States, certain concurrent regulations governing pelagic sealing, chief of which were that no seals should be killed in the waters within sixty miles of the Pribyloff Islands, nor from May 1 to July 31 within a zone of the Pacific Ocean including Bering Sea north of the 35° of north latitude and east of the 180th meridian. These regulations were to remain in force until abolished or modified by mutual consent of the two powers. In 1896 the Bering Sea Claims Commission was constituted to settle Canadian claims against the United States for seizures in Bering Sea which the Paris Award declared in effect to be illegal. On December 17, 1897, this commission made its award, the total amount of compensation allowed being nearly $464,000.

A liberal convention held at Ottawa in 1893 was largely attended by liberals active in provincial and federal politics. It declared in favour of Senate reform, economy, a Dominion plebiscite on prohibition, and the repeal of the Franchise Act. The chief business of the convention was to settle the policy of the party as to the tariff and reciprocity. Unrestricted reciprocity was virtually abandoned, but the party declared

for 'a fair and liberal reciprocity treaty,' including a well-considered list of manufactured articles. It denounced the principle of protection as radically unsound, and demanded that the tariff be so arranged as to promote freer trade with the whole world, especially with Great Britain and the United States.

Reciprocity for a time dropped out of sight and tariff reform took its place. Tariff reform was strongly advocated not only by the liberals but by the Patrons of Industry, a farmers' organization, and by D'Alton McCarthy and Colonel O'Brien, two conservatives who were prominent also in the Equal Rights movement. McCarthy was a pioneer in advocating a preferential tariff favouring British imports. The Equal Rights platform contained a declaration for such a tariff.

The government recognized the force of the demand for tariff reduction, and Sir John Thompson announced that the tariff would be modified, that the government would 'lop the mouldering branch away.' A commission was appointed to inquire into the working of the tariff, and in the session of 1894 George E. Foster, the minister of Finance, proposed important reductions in duties. Some of these reductions were withdrawn because of the energetic protests of manufacturers; but the law as enacted was a substantial measure of relief in taxation. The liberals declared that the changes were inadequate, and in the House of Commons moved practically the same resolution that had been adopted at the liberal convention. Thus the tariff remained one of the main issues between the parties until the election of 1896.

The action of the Manitoba legislature in 1890 in abolishing separate schools for Roman Catholic children and establishing a non-sectarian system was the signal for a struggle in the courts and in the political arena which lasted six years. The right to separate schools was based upon the Manitoba Act of 1870, which provided that the province should not pass legislation prejudicially affecting any right or privilege with respect to denominational schools which any class of persons had by law or practice in the province at the union. It was further provided that an appeal should lie to the governor-

general in council from any act or decision of the province affecting any right or privilege of a Protestant or Roman Catholic minority in relation to education. If the decision of the governor-general in council were not executed, the parliament of Canada was empowered to make remedial laws 'for the due execution of the provisions of the section.' In 1871 an educational system was established in Manitoba. The management of the schools was vested in a Board of Education with a Protestant and a Roman Catholic section, the latter having control of schools attended by Roman Catholic children.

The legislation of 1890 abolished this Board of Education, established a new board without recognition of any denomination, and made all schools non-sectarian. This legislation was open to attack in three ways: (1) by the exercise of the power of disallowance by the Dominion government; (2) by attacking the validity of the law in the courts; (3) by an appeal to the governor-general in council for remedial legislation. The government declined to disallow the law. The law was attacked in the courts and the case carried up to the Privy Council, which decided that the legislation was constitutional, and that the only right and privilege which Roman Catholics enjoyed was that of establishing their own schools and maintaining them by their own contributions.

The attack having failed at two points, one political and one legal, there remained a procedure which partook of both characters, namely, the appeal to the governor-general for a remedial order and to the Dominion parliament for remedial legislation. The Dominion government referred the matter to the Supreme Court, which decided that no remedy could be given. An appeal being taken to the Privy Council, that court ruled that the government could apply a remedy, the nature of which it did not specify. It declared, however, that it was not necessary to re-enact the statutes repealed in 1890, but that the grievances might be removed by supplementary legislation.

By this judgment the matter was again thrown into the political arena. It is true that an attempt was made to divest it of its political character. It was argued that a legal or

constitutional duty was cast upon the government and parliament, that they were bound, throwing aside their political and sectarian feelings, to abide by the constitution and to obey the judgment of the Privy Council. This seems to have been the intention of the framers of the Manitoba Act of 1871. If so, they were giving a counsel of perfection, in which the element of human nature was left out. A political body could not, by the mere words of a statute, be converted into a court or an instrument for executing the judgment of a court. Human nature and politics asserted themselves. Men took sides according as they were Protestants or Catholics; as they liked or disliked separate schools; as they favoured the restriction or the expansion of provincial powers; as they desired the life or the death of a conservative government. By all these currents of thought in the country parliament was swayed.

For instance, the abolition of separate schools in Manitoba was inspired by the Equal Rights movement in Ontario. The leader of that movement stood with the Hon. Joseph Martin on the platform where the announcement was made that separate schools would be abolished. Again, in 1893, while the Manitoba School Question was pending, the Protestant Protective Association began to play a part in politics. It was an offshoot of the American Protective Association, and borrowed some of the ideas and phrases of that organization. Its members were bound not to employ Catholics in any capacity if Protestants could be obtained, not to countenance the nomination of a Catholic to any public office, and not to support any Roman Catholic church or institution.

The Protestant Protective Association entered into municipal and provincial politics in Ontario, opposed the Mowat government and carried some by-elections. But its force was also directed against the Dominion government, whose head during 1893 and 1894 was a Roman Catholic and a convert from Protestantism. It was said that Sir John Thompson had a definite plan for settling the question of the Manitoba schools and was not anxious about it. But he died suddenly in December 1894 without disclosing his policy further than to say that his government would stand by the constitution.

And although a Catholic was succeeded as premier by a leading Orangeman, the Protestant Association remained in the field as the opponent of any measure intended to restore separate schools in Manitoba.

III

SIR MACKENZIE BOWELL

THE political situation was fundamentally changed by the sudden death of Sir John Thompson at Windsor Castle on December 12, 1894, soon after he had been made a member of the imperial Privy Council. His death was a heavy blow to the conservative party, especially as in the Manitoba School Question it required the services of its greatest constitutional lawyer. His successor was Sir Mackenzie Bowell, leader of the government in the Senate.

It was under the Bowell premiership that the federal ministry acted on the judgment of the Privy Council. They issued an order that the legislation of 1890 ought to be supplemented by an act restoring to the Roman Catholic minority the rights and privileges of which it had been deprived, namely: (1) the right to maintain Roman Catholic schools; (2) the right to share proportionately in public educational grants. It was intimated that if this were not done, parliament might be compelled to give relief by remedial legislation, and the legislature might thus be deprived of a large measure of its authority.

The Manitoba legislature replied that the remedial legislation would restore separate schools with no better guarantee of efficiency than existed before 1890; that the schools were inefficient; that many of the people were illiterate; that Manitoba had difficulty in maintaining an efficient system of primary education, and that the difficulty would be increased by a division of resources among various religious bodies. They said that the remedial order was issued without full information, and they suggested investigation. The Ottawa government replied that the matter would

be dealt with by the Dominion parliament in 1896, unless previously settled. Throughout the discussion Laurier declined to commit himself, except to say that coercion was unwise and that there should be inquiry and conciliation. Being pressed for a more definite declaration, he compared himself jokingly with Wellington : 'I am within the lines of Torres Vedras. I will get out of them when it suits me, and not before.'

Dissensions now arose within the cabinet, due in part to the school question and in part to other difficulties. The school question was responsible for the resignation of Clark Wallace, minister of Customs and Grand Master of the Orange Order, on December 12, 1895. A few days later came the astounding news that half of the Bowell ministry had resigned. The Bolters, as they were called, were the Hon. George E. Foster, Sir Hibbert Tupper, the Hon. John Haggart, W. B. Ives, John F. Wood, the Hon. Dr W. H. Montague and the Hon. Arthur R. Dickey.

IV

SIR CHARLES TUPPER

THE explanation given by the Hon. G. E. Foster to the House of Commons did not mention the school question, but expressed dissatisfaction with the leadership of Sir Mackenzie Bowell. The 'Bolt' gave the conservative party a blow from which it suffered for many years. An attempt at recovery was made by reconstructing the government under the veteran Sir Charles Tupper, who left his post as high commissioner at London to save the situation. About the same time the Manitoba legislature was dissolved and more than three-quarters of the constituencies supported the government on the school question. A final effort was made to settle that question by conference between Sir Donald Smith, Arthur Dickey, minister of Militia, and Senator Desjardins, representing the Dominion, and the Manitoba government. This having failed, Sir Charles Tupper introduced legislation to give effect to the remedial order. Wilfrid

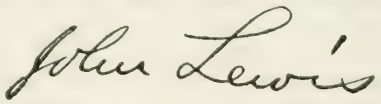
Laurier, by moving the six months' hoist, placed his party squarely on record against the measure. The discussion dragged on through the months of March and April, obstructive tactics being used by the opposition and by a small body of conservatives led by the Hon. Clark Wallace. As parliament was soon to expire by the effluxion of time, the success of these tactics was assured, and near the end of April even so dogged a fighter as Tupper saw that the case was hopeless and withdrew the bill.

In the general election which followed the chief issues were the school question and the tariff. The liberals, by the declaration of 1893, were pledged to remove protection from the tariff. Just before the election this position was modified. In a correspondence between the leader of the opposition and George H. Bertram of Toronto, the former declared that manufacturers had nothing to suffer but much to gain from the substitution of a revenue tariff for the existing system; that it would give the tariff greater stability and permanency. Again, Sir Oliver Mowat, in a published letter consenting to join Laurier at Ottawa, agreed with him that tariff legislation must be gradual and cautious; that the changes should relieve farmers and not injuriously affect but rather benefit manufacturers and workmen. 'Capital has been invested in manufactures in the faith that a system which our people unfortunately sanctioned for eighteen years should not be abrogated hastily or without due regard to the interests which have arisen under that system.'

The leading cause of the liberal victory of 1896 was personal. The conservative party had suffered heavily by the hand of death. It had lost not only Sir John Macdonald but his successors, Abbott and Thompson. Its Quebec leader, Langevin, was politically destroyed, and the eloquent Chapleau had retired to the position of Lieutenant-Governor of Quebec. Just before the election there was talk of Chapleau and Chief Justice Meredith re-entering politics as allies of Sir Charles Tupper, but if there was such a plan it fell to the ground.

On the other side the personal strength of the liberal party was remarkable. Laurier was now the unrivalled 'favourite

son' of Quebec, and in spite of his opposition to remedial legislation he carried almost every riding in that province. Associated with him were not only those who had fought by his side in parliament—Cartwright, Mills, Paterson, Charlton, Mulock, Davies, Lister, Cameron—but such eminent provincial leaders as Mowat in Ontario, Fielding in Nova Scotia, and Blair in New Brunswick. Tupper fought with his old dash and courage, but the odds were against him. It was remarkable that Manitoba, which was resisting the remedial legislation, gave a majority to the government; that Ontario, the stronghold of the opposition to separate schools, gave only a small liberal majority; and that the decisive liberal majority came from Quebec, the French and Catholic province in which the strongest support for separate schools might have been expected.



THE LAURIER RÉGIME

1896-1911

THE LAURIER RÉGIME, 1896-1911

The Manitoba School Question

SIR CHARLES TUPPER resigned the premiership on July 8, and on July 13 Wilfrid Laurier had formed his administration as follows :

Wilfrid Laurier, prime minister and president of Privy Council.
Sir Richard Cartwright, minister of Trade and Commerce.
R. W. Scott, secretary of state.
Sir Oliver Mowat, minister of Justice.
L. H. Davies, minister of Marine and Fisheries.
F. W. Borden, minister of Militia and Defence.
Wm. Mulock, postmaster-general.
Sydney A. Fisher, minister of Agriculture.
J. Israel Tarte, minister of Public Works.
Wm. S. Fielding, minister of Finance.
A. G. Blair, minister of Railways and Canals.
R. R. Dobell, without portfolio.
C. A. Geoffrion, without portfolio.
Charles Fitzpatrick, solicitor-general.
Wm. Paterson, controller of Customs.
H. G. Joly, controller of Inland Revenue.[1]

Some time afterwards Clifford Sifton of Manitoba was appointed minister of the Interior. He had been a prominent member of the Manitoba government.

The first important work undertaken by the new government was the settlement of the Manitoba School Question. It was provided that at the wish of trustees or parents there should be half an hour's religious instruction by a clergyman at the end of the school day, and that where there was a certain

[1] The last three were not at this time of the cabinet.

attendance of Roman Catholic children, the parents or guardians might require the employment of a certificated Roman Catholic teacher.

Sir Charles Tupper protested that the settlement fell short of justice, but said that he would not pursue the contest. The question ceased to be a political issue. The Roman Catholic bishops of Quebec continued their opposition until quieted by a visit from Monsignor Merry Del Val, who was sent to Canada as the result of an appeal made to Rome by Catholic liberals. Archbishop Langevin of St Boniface was never reconciled to the settlement and opposed it at every opportunity.

The New Tariff

In preparation for the framing of a new tariff, W. S. Fielding and the other ministers having duties connected with commerce and the collection of revenue were formed into a tariff commission, which held meetings in various parts of Canada and heard representations from all who wished to present their views. Fielding in his budget speech delivered on April 23, 1897, said that tariff changes must be made with caution and without injustice to existing interests. The protected industries would have no right to complain if every vestige of protection disappeared, but there were others to be considered. Protection was so interwoven with the business and industry of Canada that to abolish it would do widespread injury. Again, at the time of the liberal convention in 1893, there was reason to believe that the United States had resolved to reduce its tariff, and the liberal party desired to show that Canada would reciprocate. But Congress seemed now to be of another mind, and while the minister would not meet the Dingley Bill in a retaliatory spirit, he thought Canada should hold her hand for the present.

The preferential tariff now adopted was based on the idea of reciprocity. The lower tariff was to apply to countries which admitted the products of Canada on terms as favourable. While Great Britain was not specifically mentioned, it was recognized that British imports mainly would be affected. The preferential duty was fixed at seven-eighths of

the regular duty for the first year and three-fourths after July 1, 1898.

Issue was joined with those who proposed to make the preference conditional upon the adoption by Great Britain of preferential duties on grain favouring the colonies. Canada, the minister of Finance said, would not wait for this doubtful event, but would lead the way. It was explained that the German and Belgian treaties prevented Canada from giving a preference to Great Britain alone. It may be stated here that the treaties were subsequently denounced and the preference was made purely British. The tariff also abolished many of the specific duties which bore heavily on cheaper goods, and it made large additions to the free list, including corn, barbed wire and binder twine, and reduced the duties on coal, oil, sugar, mining machinery and products of iron and steel. The tariff was received with favour, as a practical and substantial measure of reform. It did not abolish protection, and its authors were taunted with not fulfilling that part of the resolutions of the liberal convention of 1893. But the change was followed by prosperity in manufacturing industry, commerce and agriculture, and by an immense increase in trade and abounding revenues.

The preference was received in Great Britain with satisfaction, and greatly contributed to the enthusiasm which marked the celebration of the sixtieth anniversary of the queen's reign. During the colonial conference held in connection with this celebration, Joseph Chamberlain, secretary of state for the Colonies, pointed out that complications might be caused by the working of the Canadian reciprocal tariff. If, for instance, Canada gave the preference to Holland, she might be bound by the most favoured nation treaties to make the same concession to practically every important commercial country in the world. On the other hand, the German and Belgian treaties prevented the granting of the preference to Great Britain alone. A way out of the difficulty was found by denouncing the German and Belgian treaties. Canada's hands were thus freed, and in the following session the preference was confined to Great Britain.

The trade returns throw some light on the working of the

British preference. From 1883 to 1897 the annual British imports declined from $51,679,762 to $29,401,188. There were fluctuations from year to year, but the general course was downward. From 1897 to 1910 British imports rose from $29,401,188 to $95,336,427. At the same time the general imports showed an increase from $119,218,609 to $391,852,692. The increase cannot therefore be ascribed entirely to the preference ; it was part of the general growth of trade. But it can fairly be said that the preference checked the decline which was visible up to 1897 and assisted the increase which appeared afterwards. It was also contended that although no preference was given to Canadian products through the British tariff, there was a substantial preference through sentiment and goodwill, and a consequent increased demand for Canadian goods in Great Britain. From 1897 to 1910 Canada's annual exports to Great Britain increased from $69,533,852 to $139,482,945. But this too was part of a general increase of trade, and it was due in part to the high American tariff which forced Canada to seek new outlets and to cultivate the British market. Thus, in eight years before the preference, exports to England increased from $33,504,281 to $69,553,852.

The Joint High Commission

In 1898 and 1899 an attempt was made to settle several questions arising out of the relations between Canada and the United States. The United States desired to strengthen its position as to the Bering Sea seal fisheries. It contended that the regulations imposed by the Paris Award in 1893 were not sufficiently restrictive and that seal life was disappearing. Great Britain maintained that no sufficient evidence had been adduced to show that these regulations had failed in their effect. She would not therefore consent to a revision, but was not averse to considering whether, in return for some *quid pro quo*, Canada might not be willing to forgo for a time her right of pelagic sealing.

These and other matters were considered by a joint high commission. The list of questions was as follows : (1) the

THE JOINT HIGH COMMISSION AT QUEBEC, 1898

From a photograph, Montmorency, Quebec

Alaskan and Atlantic fisheries; (2) the Alaskan boundary; (3) trade relations; (4) agreement limiting the number of warships on the Great Lakes; (5) alien labour laws; (6) bonding privilege; (7) preservation of fish in international waters.

The British commissioners were Lord Herschell, Sir Wilfrid Laurier, Sir Richard Cartwright, Sir Louis Davies and John Charlton, M.P. Sir James Winter represented Newfoundland. The United States was represented by Senator Fairbanks of Indiana, Senator Gray of Delaware, John Watson Foster, Congressman Dingley of Maine, J. A. Kasson and T. Jefferson Coolidge of the State department. Dingley died during the sittings and was replaced by Sereno Payne of New York State. Lord Herschell, who acted as chairman of the commission, had the misfortune to break his thigh by a fall in the street a few days before the adjournment of the commission, and died at the Shoreham Hotel, Washington, on March 1, 1899.

The commission sat at Quebec from August 23 to October 10, 1898, and at Washington from November 10, 1898, to February 20, 1899. The commissioners came to an agreement for free trade in minerals and for a lowering or removal of duties on certain agricultural products and manufactures, and for the preservation of fish in the Great Lakes. There was a discussion over the convention made in 1818, limiting to a fleet of four small vessels the navy to be maintained by each country on the Lakes. The Americans desired to modify this convention so as to allow warships to be built at Lake ports. It was suggested that the British commissioners might agree to permit partially constructed vessels to pass through the canals. This might have been arranged, but that the negotiations were broken off for another cause. There was evidence of willingness to repeal the alien labour laws on both sides of the line. There was a proposal to make permanent the bonding privilege, by which Canadian goods were imported at American ports on the Atlantic, and American goods shipped through the western peninsula of Ontario. The American commissioners considered that Canada was the chief gainer from this arrangement, and would have

asked for substantial concessions as a condition of making it permanent.

All this discussion, however, came to nothing, because the negotiations split upon the question of the boundary between Canada and Alaska. From the south of Alaska there lies between Canada and the Pacific Ocean a strip of land belonging to the United States, which had in 1867 acquired the rights given to Russia in a treaty between that power and Great Britain in 1825. The questions at issue will be more fully described later on. At present it will be sufficient to say that the main question in the minds of the commissioners was the ownership of seaports on the Lynn Canal, a deep inlet cutting through the strip at the north. The treaty provided that the boundary should begin at the south end of Prince of Wales Island and should ascend to the north along the Portland Channel as far as the point of the continent where it strikes the 56th degree of north latitude. Then the line was to follow the summit of mountains parallel to the coast. When these mountains were more than ten leagues from the ocean, the boundary was to be formed by a line parallel to the windings of the coast and never more than ten marine leagues therefrom. Canada contended that there was a well-defined coast range forming the boundary, and that if this were followed the greater part of the Lynn Canal would be in Canadian territory. The United States claimed that the boundary should follow the windings of the coast, thus passing eastward of the Lynn Canal and bringing the whole of that inlet within Alaska. The question was of no practical importance until the discovery of gold in the Klondyke in 1897. The winter route to the goldfield lay by the Lynn Canal and over the mountains. Dyea and Skagway, lying at the inner end of the Lynn Canal, were the recognized ports. The British commissioners, while contending that Dyea and Skagway were in Canadian territory, offered as a compromise to leave them in the possession of the United States, provided another port, Pyramid Harbour, were retained by Canada. This proposal was rejected. Proposals were then made to define the true boundary, one of the Canadian suggestions being that the method used in settling the Venezuela boundary should be precisely followed.

These proposals came to nothing. The British commissioners then declared that they would not proceed further until the boundary question had been disposed of either by agreement or by arbitration. And so negotiations came to an end.

The South African War[1]

In 1899 Canada took a new position in regard to the defence of the Empire. Upon previous occasions Canadians had taken part in wars in other parts of the Empire, but in a manner which did not commit the whole country. There were Canadian volunteers for the war in the Crimea, and as a result of the Indian Mutiny the Prince of Wales Royal Canadian regiment was formed as part of the British army and recruited in Canada. In 1877 the danger of war with Russia produced an offer of a regiment from Canada, and similar offers were made during the war in the Soudan in 1884. The Canadian government in the last case was willing to aid in the raising of a contingent, but did not offer to equip or maintain it. Canada was represented by a company of voyageurs in the transport service. But in none of these cases was there the loud and insistent demand for aid from Canada which appeared in the Dominion at the opening of the war in South Africa.

Imperial sentiment was running high in 1899. The Jubilee of 1897 was an occasion for an outburst of passionate loyalty. The tariff preference granted by the Laurier government had fostered imperial spirit. The very fact that Laurier was a French Canadian probably made Canadians of other races more insistent in their demand for participation in imperial movements. The British Colonial Office was under Joseph Chamberlain, a vigorous and aggressive imperialist, and it was Chamberlain who had insisted most strongly upon maintaining the rights of the Uitlanders in the Transvaal, and who assumed the chief responsibility for the Boer War.

The quarrel leading up to the war need not be here described at length. In the negotiations between Sir Alfred

[1] See 'Defence, 1812-1912' in this section.

Milner, representing the British government, and President Kruger, the British government is seen pressing for recognition of the political rights of British residents of the Transvaal Republic. But a dispute over the details of a franchise law was not itself sufficient to produce war. There was race hatred, fostered by the memories of a previous war; there was a conflict between two civilizations. The Boers, having migrated northward into the Transvaal that they might live undisturbed their pastoral life, felt that they were again being crowded to the wall by the capitalists who controlled the gold mines of the Rand. It was freely alleged that the war was brought about by the unscrupulous greed of these capitalists. It was held on the other side that it was due to the obstinacy and tyranny of the Boer leaders. The real issue, according to others, was whether the whole of South Africa should be an independent republic or a British colony.

In April 1899 the South African League, which had been actively engaged in arousing British sentiment against the Boers, cabled to the British Empire League asking for Canadian support for the Uitlanders' petition to the queen. In July an agent for the league visited Ottawa and induced leaders in the parliament of Canada to move resolutions asking for justice and political recognition for the Uitlanders, and sympathizing with the efforts of the British government to obtain these.

The procedure illustrated the lack of proper means of obtaining colonial opinion upon imperial questions and arranging for colonial participation in imperial measures. The resolutions were passed at the instance of a person having no official standing, the agent of a political party in South Africa. They were afterwards taken as committing Canada to approval of the war; but it is not clear that this was the understanding of those who took part in the brief debate. Sir Wilfrid Laurier, in moving the resolutions, said that they might help to avert the dread arbitrament of war. The feeling expressed was that the Boers would be hopelessly overmatched in a conflict with the British Empire, and that some pressure from the colonies might help to convince them that it was useless to resist. The debate was not character-

ized by the care and deliberation which would have marked the conscious adoption of a new and important policy. Little was known in Canada of the tangled web of causes leading up to the war. The Right Hon. Arthur Balfour afterwards said that the imperial government was supported by the conscience of the Empire. Here he confused cause and effect. Canada at least relied upon the conscience of Balfour and his colleagues, and took the British side because it was British, not as a result of independent examination and judgment.

Parliament had been prorogued when the situation became critical and war was imminent. A proposal that Canada should send contingents to South Africa met with a hearty response. Offers of service were received from several militia officers. On October 3 the *Canadian Military Gazette*, a paper under private control, contained an article beginning thus: 'If war should be commenced in the Transvaal, which seems most probable, the offer of a force from the Canadian militia for service will be made by the Canadian Government.' This announcement was not authorized by the government, and was premature at least. In an interview published in the Toronto *Globe* next day, Sir Wilfrid Laurier was reported as setting forth objections to the sending of a contingent, one being that the government could not act without the consent of parliament.

On October 3, the date of the *Gazette* article, Chamberlain telegraphed to Lord Minto, Governor-General of Canada, as follows: 'Secretary of State for War and Commander in Chief desire to express high appreciation of signal exhibition of patriotic spirit of people of Canada, shown by offers to serve in South Africa, and to furnish following information to assist organization of force offered into units suitable for military requirements.' Then followed the details of organization of the force, according to the plans of the British authorities. It was intimated that the secretary of state for War would gladly accept four units from Canada.

On October 7 Sir Wilfrid Laurier left Ottawa for Chicago, to attend a civic function which was to be the medium for an exchange of international courtesies. He returned to Ottawa

on the 12th. In the meantime, on October 9, the Boer ultimatum had been issued, demanding settlement of all difficulties by friendly arbitration, withdrawal of troops on the frontiers of the Transvaal, and removal of all reinforcements which had arrived in South Africa. The republic on its part gave assurance that there would be no attack on any British possessions during the further negotiations proposed, and that the armed burghers would be recalled from the frontiers. On October 10 Chamberlain replied that these demands could not be considered. War, therefore, had been declared when Sir Wilfrid returned to Ottawa, and when the question of sending contingents had to be considered in council. On October 13 an order-in-council was issued. It referred to Chamberlain's dispatch of October 3, and said :

> The Prime Minister, in view of the well-known desire of a great many Canadians who are ready to take service under such conditions, is of opinion that the moderate expenditure which would thus be involved for the equipment and transportation of such volunteers, may readily be undertaken by the Government of Canada without summoning Parliament ; especially as such an expenditure, under such circumstances, cannot be regarded as a departure from the well-known principles of constitutional government and colonial practice, nor construed as a precedent for the future.

The command of the contingent, which was to consist of about one thousand men, was given to Lieutenant-Colonel Otter, commanding officer of the Royal Canadian Regiment of Infantry and a Canadian soldier of long experience. The work of enrolling and equipping the contingent went forward with energy, and with many evidences of popular enthusiasm, and on October 30 it sailed from Quebec, having at that point listened to addresses from the governor-general, Sir Wilfrid Laurier, Major-General Hutton, and Mayor Parent of Quebec.

The opinions, or rather the sentiments, of Canadians varied. Speaking generally, those who traced their descent back to the British Islands were zealous champions of the British cause, and eager that Canada should come to the aid of Great Britain. There was a minority composed of those who, like Goldwin Smith, believed the war to be unjust, or

were doubtful of its justice, or thought that action should not be taken without the consent of parliament. In Quebec, where racial association was not a motive, there was little or no enthusiasm for the war and some sympathy for the Boers, which was openly expressed. There was also among French Canadians a prevailing dislike to taking part in imperial wars of any kind outside of Canada.

On October 18, Henri Bourassa, a rising liberal, resigned his seat in parliament as a protest against the sending of the contingents, and offered himself for re-election in order to test the opinions of his constituents in Labelle. He wrote a letter to the prime minister, declaring that constitutional liberty was in danger if, on the strength of a dispatch from the British colonial secretary, Canada could be called upon to take part in a war of questionable justice, while Canada had no representation in the imperial parliament. Having no means of making a protest in the Canadian parliament, he submitted himself to his constituents. He was re-elected by acclamation.

Dominique Monet, member for Laprairie and Napierville, declared his willingness to resign and make a test of the same kind upon requisition by twenty-five electors, liberal or conservative. No requisition was sent, and he assumed that his constituents agreed with him in disapproving of the action of the government. J. Israel Tarte, minister of Public Works, also took strongly the ground that parliament ought to have been consulted. These and other utterances irritated Ontario. There public feeling ran high in favour of Canadian aid; there was a tendency to blame the government for hesitation, and the grave objection to sending troops without parliamentary consent was impatiently brushed aside. In his address to the contingent at Quebec the governor-general said that the people of Canada 'had no inclination to discuss the quibbles of colonial responsibility,' and this was the view of many English-speaking people.

In the early stages of the war heavy reverses were suffered by the British troops. It was recognized that the Boers had shown remarkable military strength, and what was at first regarded as a mere punitive expedition or demonstration in

force developed into a formidable war, taxing all the resources of the Empire. Hence there was a state of high nervous tension ; expressions of opinion leaning towards the Boer side were regarded as treasonable, and produced anger and even personal violence. The dominant view in Quebec was not hostility to Great Britain, but conservatism, a lack of interest in the war and a desire to continue in the old paths. But this view was so widely different from the prevailing view of Ontario that there was grave danger of race cleavage. Because there was a French Canadian at the head of the government its every action was criticized with severity and even with suspicion. Especially was public opinion in Ontario excited by some speeches made by Tarte at the Paris Exposition. As reported, these speeches were aggressively French in tone. Tarte afterwards denied the correctness of the reports, but they produced a strong impression. 'Shall Tarte rule?' became a war-cry in Ontario.

When parliament met in February, Henri Bourassa moved a resolution insisting on the sovereignty and independence of parliament, refusing to consider the action of the government in sending contingents as a precedent, and asserting opposition to any change in the existing political and military relations with Great Britain, unless such change were initiated by the sovereign will of parliament and sanctioned by the people. The principle enunciated was sound, but at the time it was taken simply as an expression of Bourassa's hostility to the sending of the contingent, and an almost solid vote was cast against the resolution. Sir Wilfrid Laurier, in speaking to the motion, laid stress on the importance of unity in Canada. He did not deny that the government had yielded to public opinion, but he placed this action upon higher ground than desire to retain office. 'What would be the condition of this country to-day if we had refused to obey the voice of public opinion? . . . a most dangerous agitation would have arisen, an agitation which according to all human probability would have ended in a line of cleavage upon racial lines. A greater calamity could never take place in Canada.' Laurier denied that the hand of the government had been forced by the imperial authorities. 'We acted in the full independence of

our sovereign power. What we did, we did of our own free will, but I am not to answer for the consequences, or for what will take place in the future.' He declared that the people of Canada must have their way.

A new turn was given to the controversy by a speech delivered by Sir Charles Tupper, then leader of the opposition, at the Garrison Club, Quebec, on March 31, 1900. Instead of taking the usual line of attacking the government for lack of sympathy with imperialism, Sir Charles rather intimated that the government had gone too far in that direction. He claimed credit for breaking up the old Imperial Federation League, which stood for colonial contributions to the British army and navy, and he warned his hearers against any policy which would make Canada responsible for regular contributions of that kind. In various conservative journals in Quebec, and in a pamphlet in French issued by the conservative party, Sir Wilfrid Laurier was attacked for his imperialistic tendencies.

By the time the general election arrived in October 1900 the strain of the war had been relaxed. A second and a third contingent had been dispatched. Ladysmith had been relieved, Pretoria had been taken, and Paardeberg and other British successes had given assurance of British supremacy. Yet the feeling in Ontario was still so strong that the government lost twenty-two seats, retaining only thirty-four out of a total of ninety-two. In Quebec it gained six. The fact that there was so large a conservative majority in Ontario and so overwhelming a majority for the liberals in Quebec—fifty-seven out of sixty-five seats—seemed to show the existence of a dangerous racial cleavage. But in the other English-speaking provinces there was no such indication. In the Maritime Provinces the government made considerable gains, carrying more than two constituencies to one, where formerly the parties had been almost equal. In the West the conservatives made some gains, but the government had a considerable majority of seats.

In 1901 Sir Charles Tupper, who had now reached the age of more than eighty years, resigned the leadership of the opposition. He was succeeded by Robert Laird Borden, a

leading Halifax lawyer, who had first entered the Dominion parliament in 1896. He was a man of solid character and attainments, with a style of oratory better adapted to the bar and to parliament than to the platform. His ideals were high, and he showed a special interest in electoral and civil service reform.

Preferential Trade

In 1900 the British preference was increased from one-fourth to one-third. The increase caused some uneasiness among Canadian manufacturers, especially of woollens. The preference was discussed at a colonial conference held in London in 1902. The Canadian ministers asked that in consideration of the British preference, Canadian grain should be exempted from the duty recently imposed in Great Britain. This was a registration duty of one shilling a quarter on wheat, imposed by C. T. Ritchie, as Chancellor of the Exchequer, in 1902. Joseph Chamberlain had privately pressed for the exemption of the colonies from this duty, but in vain ; Ritchie declared that the duty was levied for revenue purposes solely and that he would resign rather than give a preference which would be the beginning of taxes on food. At the conference Chamberlain intimated that the duty could not be removed in consideration of the existing preference, but suggested that the rate of the preference be increased. The Canadian ministers intimated that this might be done in consideration of the removal of the British duty on colonial grain. Next year Ritchie had the tax repealed on all wheat and flour. The Right Hon. Henry Chaplin, an English protectionist, made a vain effort to restore the tax. The Irish members, the liberals, and the bulk of the unionists voted against his motion.

After this the rift between free traders and protectionists in the ranks of the unionists grew wider. Chamberlain resigned from the ministry in order to be free to carry on his campaign for protection and preference. On the other side the Free Trade Union was formed, and was joined by the Duke of Devonshire and the Earl of Rosebery. The overwhelming defeat of the government in 1905 put an end to the

possibility that protection would be restored for some years, but within the unionist party the protectionist movement gained ground.

There may be mentioned at this point a controversy which arose with Germany over the British preference. Germany claimed that the preference was a discrimination against her, and retaliated by placing Canadian imports under her higher or general tariff. Canada contended that the preference was a domestic affair, to which Germany could not object, just as Canada could not object to Prussia favouring Bavaria. Germany replied that Canada was trying to occupy at one and the same time the position of part of the Empire and of an independent country. In 1903 Canada imposed a surtax upon foreign countries treating Canadian products unfavourably, Germany being at once indicated. The tariff war considerably diminished the trade between the two countries until 1909, when Germany yielded, and the Canadian surtax was removed.

The Alaskan Boundary [1]

It has been shown that the joint high commission was dissolved in 1899 because of failure to come to an agreement as to the Alaskan boundary. On January 24, 1903, it was agreed to refer the question to a tribunal, to consist of six impartial jurists of repute, 'who shall consider judicially the questions to be referred to them.' Three were to be appointed by Great Britain and three by the United States. In explaining the agreement Sir Wilfrid Laurier declared that there was to be not a compromise but a judicial interpretation of the treaty with Russia, whose rights had passed to the United States as the purchaser of Alaska.

When the names of the American commissioners were announced there was much adverse comment in Canada. They were Elihu Root, secretary of state for War, Senator Lodge of Massachusetts, and Senator George Turner of Washington. It was contended that these were not impartial jurists; that Senator Lodge had often expressed strong views in favour of the American claims, and that Senator Turner

[1] See 'Boundary Disputes and Treaties' in this section.

represented a Pacific state which was keenly interested in the result. The Dominion government protested, but the imperial government declared that it would be useless to press the point.

On the British side the three arbitrators at first named were Lord Alverstone, Lord Chief Justice of England, Justice Armour of the Supreme Court of Canada, and Sir Louis Jetté, lieutenant-governor and formerly a judge of the Province of Quebec. The mention of these names shows a clear intention to comply with the condition to appoint 'impartial jurists of repute.' Justice Armour died before the arbitration, and his place was taken by Allen Bristol Aylesworth, K.C. (afterwards Sir Allen), an eminent Toronto lawyer.

During the arbitration there was uneasiness in Canada, due to an impression that the result would be adverse to her in any event. Towards the close there were reports of disagreement between the Canadian commissioners and Lord Alverstone. On October 20, 1903, the award was made public, together with a statement that Jetté and Aylesworth had refused to sign it. The effect of the award was as follows :

The treaty of 1825 made the boundary line begin at the southern point of Prince of Wales Island. The tribunal was asked to say what that point was, and it answered, unanimously, Cape Muzon. The treaty made the line of demarcation pass through Portland Channel. The tribunal was asked to say what the Portland Channel was, and it answered unanimously that it was the channel which passed to the north of Pearse and Prince of Wales Islands.

Here the divergence began and all the remaining answers were those of the majority, Lord Alverstone, Elihu Root, Senator Lodge and Senator Turner. They decided that the Portland Channel, after passing to the north of Prince of Wales Island, is the channel known as the Tongas Channel, passing between Prince of Wales and Sitklan Islands. They were asked to decide whether it was the intention of the treaty of 1825 that there should remain in the exclusive possession of Russia a continuous fringe or strip of coast on the mainland, ten marine leagues in width, separating the British

possessions from inlets and waters of the ocean. The majority answered this question in the affirmative, and this was the decisive answer, having the effect of shutting off Canada from the Pacific Ocean, from the whole western coast as far south as the Portland Channel, and giving the Lynn Canal and all other inlets to the United States.

The decision was adverse to Canada. It cut off not only the Yukon, but Northern British Columbia from access to the Pacific Ocean, except through United States territory. But there were Canadians who had already concluded that the main contention of Canada could not be upheld, and the decision might have been accepted without complaint if there had been confidence in the tribunal and the procedure. A widespread belief that there had been a diplomatic sacrifice of the interests of Canada may be traced to a defect in the constitution of the tribunal. What this defect was will be better understood from the statements of the Canadian commissioners.

As to the course of the Portland Canal, the Canadian commissioners said that there were two contentions. The channel claimed by Canada lay north of four islands . Kannaghunut, Sitklan, Prince of Wales and Pearse. The Americans claimed that the channel lay south of these. ' When the members of the tribunal met after the argument the view of the three British commissioners was that the Canadian contention was unanswerable, yet a majority of the commissioners had signed an award giving Kannaghunut and Sitklan to the United States.' The Canadian commissioners protested that this division of the islands was not a judicial award, but a compromise. The decision as to the land boundary, separating the strip of coast from the interior, belonging to Canada, was in their opinion vitiated in the same way.

Upon Aylesworth's return to Canada he was announced to deliver an address before the Canadian Club, Toronto. It was expected that there would be at this meeting a demonstration of resentment, but extraordinary efforts were made to prevent this, and Aylesworth's speech was of a kind to calm excitement. He repeated his opinion that the judgment was wrong ; that both as to the island and the mountain boundary

there was a division of territory, not an adjudication. He also explained a difference between his own view and that of Lord Alverstone as to the position of the arbitrators. He held that they were delegates, sworn to judge impartially, yet each with 'a natural and inevitable bias' towards his own country; while Lord Alverstone regarded himself as an arbitrator between two contesting parties, Canada and the United States. But while holding to his own opinion, Aylesworth concluded by saying the award must be accepted, and he expressed with great fervour his loyalty to Great Britain.

The essential defect of the tribunal was that it was so formed that no point upon which there was a disagreement could be decided in favour of Canada. If the Americans adhered firmly to their contention, and if Lord Alverstone held with equal firmness to the Canadian contention, there would be a deadlock. If Lord Alverstone decided that the American contention was right there would be four to two against Canada. If the intention was to make Lord Alverstone the umpire between Canada and the United States, he ought to have been placed definitely in that position. It was the attempt to combine in him two positions, that of delegate and umpire, which exposed him to adverse criticism.

A New Transcontinental Railway

In 1903 the Dominion government and the Grand Trunk Railway Company joined in a project to build another transcontinental railway. The company's original plan was simply to extend its eastern system by a line from North Bay on Lake Nipissing to the Pacific coast. The government made it a condition that there also should be a line from North Bay eastward to Quebec and Moncton, N.B. The plan as fully developed was for a line from Moncton westward through the centre of New Brunswick, thence through Quebec, crossing the St Lawrence near the city of Quebec, through Ontario much farther north than the Canadian Pacific, and through Manitoba to Winnipeg. From Winnipeg it was to run north-westerly to Edmonton, and thence through the

Yellowhead pass in the Rockies to a point near Fort Simpson on the Pacific coast. There were to be several branches, including one from Fort William and Port Arthur, northwesterly to the main line. This was to provide a connection with the system of transportation by the Great Lakes, in addition to the all-rail route.

The government was to build the eastern section, from Moncton to Winnipeg; the company was to build from Winnipeg to the coast. The company undertook to build the western section in five years from December 1, 1903. The government agreed to lease the eastern section to the company for fifty years. For the first seven years no rent was to be paid; for the succeeding forty-three years the company was to pay three per cent on the cost of construction. The government reserved running rights over the whole line, and the company obtained running rights over the Intercolonial Railway. There was no land grant, but the government undertook to guarantee the railway bonds at three per cent on seventy-five per cent of the cost of construction, not to exceed $13,000 per mile on the prairie section and $30,000 a mile on the mountain section. The construction of the government section was placed under the control of four commissioners appointed by the government.

The Hon. A. G. Blair, minister of Railways, did not agree with the prime minister as to the mode of building the new railway. He resigned on July 14, and two days afterwards made his explanation to the house. He opposed the government line from Moncton to Quebec, because it paralleled the Intercolonial. He declared that the plan of giving running rights over the new railway was impracticable. He objected to the government building and owning the 'lean' sections of the railway while the 'fat' sections went to the company. He believed the whole line should be built and owned by the government.

On July 31 Sir Wilfrid Laurier introduced a bill for the construction of the railway. He insisted strongly on the urgent need for further means of transporting the rapidly increasing grain crop of the West. Blair spoke again, denying the need for haste, and arguing that the West would be fully

served by the Canadian Pacific and by the Canadian Northern, then being rapidly constructed.

R. L. Borden, leader of the opposition, took strong ground for public ownership, which he said would be retarded fifty years by this project. His alternative policy included the extension of the Intercolonial to Georgian Bay, the use of the Canadian Pacific from North Bay to Fort William, running powers over existing railways from Fort William to Winnipeg, and aid to the Grand Trunk Pacific to build through the prairies to Edmonton. His amendment was negatived by a party vote and the government scheme was ratified.

In 1904 the company asked for and obtained certain changes in the agreement. The time for the completion of the western division was extended by three years, so that the new date fixed for completion was December 3, 1911. The guarantee of bonds was enlarged, so far as the mountain section was concerned. Instead of a guarantee of seventy-five per cent on a maximum cost of $30,000 a mile, there was to be a guarantee of seventy-five per cent on the cost, whatever it might be. The subject was now reopened and the attack renewed. Many amendments were proposed; the leading principles advocated being the extension of the government ownership, and the submission of the measure to popular vote. The legislation was adopted by a party majority.

Early in 1903 a bill creating a railway commission had been introduced by the then minister of Railways, the Hon. A. G. Blair. The bill abolished the Railway Committee of the Privy Council, which had formerly dealt with the disputes arising between railway companies, shippers and municipalities. The commission was a court, with simple and flexible procedure. It was intended to settle questions of rates and service arising between railway companies and shippers and passengers; questions of the operation and equipment of railways; questions between railways and municipalities as to crossings, etc. The bill became law, and in December 1903 Blair, who had resigned his place in the ministry, retired from parliament and shortly afterwards became the first chief commissioner. On his retirement in the following year he was succeeded by Chief Justice Killam of Manitoba, and on

the death of Killam the appointment went to Justice Mabee of Ontario. On the death of Mabee in 1912 Henry L. Drayton, corporation counsel of the city of Toronto, was chosen as his successor.

Lord Dundonald [1]

In relating the differences which arose between the Dominion ministry and Lord Dundonald, the general officer commanding the militia of Canada, it is worthy of note that there had been similar difficulties in the case of his predecessor, General Hutton, although the quarrel had not come to a head. Hutton charged the government with lack of sympathy with his ideas. Sir Wilfrid Laurier said that the difficulty was due not to broad differences of policy, but to Hutton's indiscretion and insubordination to the ministry. He contended that the general officer commanding was the adviser and not the controller of the department of Militia.

The experience of the government with General Hutton probably affected its attitude towards Lord Dundonald. Otherwise there was reason to hope that Lord Dundonald's relations with the ministry would be of a more agreeable kind. He was genial and free from arrogance. For two years after his appointment he apparently worked in harmony with the minister of Militia. He had extensive plans for the reorganization of the militia, and it was understood that Sir Frederick Borden, the minister of Militia, had accepted these in part at least and was willing to carry them out. There were, however, occasional rumours of disagreement between the minister and the general, and there were references to a report made by the latter in 1902 and suppressed by the government. At length Henri Bourassa referred to these rumours in the house. Sir Frederick Borden denied that any disagreement existed ; but he and the prime minister took the opportunity to emphasize the responsibility and authority of the government in military affairs.

A bill introduced by Sir Frederick Borden in 1904 contained a clause facilitating the appointment of a Canadian as general

[1] See 'Defence, 1812-1912' in this section.

officer commanding. This change was opposed by some conservative members. The minister of Militia said that he had no criticism to offer as to the distinguished soldiers who had held the post, but he said : ' It is high time the provision in the Canadian statute which involves a reflection upon the capacity of our own officers should be removed. It does not follow that we should appoint a Canadian officer at once.'

The explosion came on June 4, 1904. On that day a banquet was given to Lord Dundonald by local officers of the militia at Montreal. The dinner was private, but some one took a report of Lord Dundonald's speech, and in a few days it appeared in the newspapers. It then appeared that Lord Dundonald complained that his list of officers for the 13th Light Dragoons had been interfered with and the name of one of his nominees struck out. He did not complain, he said, on personal grounds of etiquette, but he was anxious that the militia be kept free from party politics. Upon inquiry by the minister of Militia, Lord Dundonald admitted the substantial correctness of the report. In a few days Lord Dundonald was dismissed upon the ground that he had publicly attacked the government under which he served. Lord Dundonald at once appealed to the people from the government. He denied that he had sought to impose his policy on the ministry. He claimed freedom only on the technical side of his work. He held that his efforts to assist the militia had been persistently blocked by men indifferent to the welfare of the force. The question now became a party issue, conservatives protesting against party interference with the militia, liberals contending that the civil authority over the militia must be supreme. The personal popularity of Lord Dundonald made him a formidable opponent, and he carried on a dashing campaign. The question was an issue in the general election of 1904, but died out after that time.

The General Election of 1904

Parliament was dissolved on September 30, 1904. It was the first election in which Robert L. Borden led the party.

The chief issue was the Grand Trunk Pacific Railway project. Interest in the contest was languid and a victory for the government was regarded as almost a foregone conclusion. In Ontario party feeling was concentrated on provincial rather than on national politics, owing to the narrow majority and precarious position of the government, headed by the Hon. G. W. (afterwards Sir George) Ross.

The chief sensation of the Dominion campaign was furnished by a story that an elaborate scheme for defeating the government had been hatched in Quebec; that the liberal organ *La Presse* had been bought by conservatives and would be turned against the government; and that in several constituencies arrangements had been made for the sudden retirement of liberal candidates, allowing conservatives to be elected in default. None of these things happened. Blair resigned the chairmanship of the Railway Commission, and it was reported that he would oppose the government, but this expectation was not fulfilled. The government was returned by an increased majority.

New Western Provinces

In 1902, 1903 and 1904 there was an agitation in the North-West Territory for full provincial standing. The territories had been advancing gradually towards this position. In 1871 they were under the authority of the Lieutenant-Governor of Manitoba; next they had a lieutenant-governor and council nominated by the Dominion government; then the council was made partly elective and partly nominated; then a legislature was created. The government was centred at Regina, and its leader was Frederick W. G. Haultain. Haultain was the foremost advocate of autonomy. His preference was for one province; others favoured the creation of two or three. In the general election of 1904 Sir Wilfrid Laurier promised autonomy, and in January 1905 there were conferences between Sir Wilfrid and Haultain. On February 21 Sir Wilfrid introduced a measure for the creation of two new provinces, Alberta and Saskatchewan. They were to

cover the whole area between Manitoba and British Columbia, and between the southern boundary of Canada and the 60th parallel of latitude, with a combined area of more than half a million square miles and a population of about half a million. The Dominion was to retain control over public lands. Provision was to be made for a system of separate schools. Sir Wilfrid Laurier's contention was that it was intended that the clause protecting the separate school system contained in the British North America Act was to be extended to new provinces. His speech was remarkable also for strong advocacy of the teaching of Christian morals and Christian doctrine in the schools.

The educational clauses of the bill were strenuously opposed. Clifford Sifton, minister of the Interior, who had, as attorney-general of Manitoba, resisted the restoration of separate schools in that province, resigned his portfolio, being unable to approve of the educational legislation for the new provinces. An open letter was addressed to the prime minister by Haultain. As to the educational clauses he said : ' The proposed attempt to legislate in advance on this subject is beyond the power of parliament and is an unwarrantable and unconstitutional anticipation of the remedial jurisdiction. It has further the effect of petrifying the positive law of the province, with regard to a subject coming within its exclusive jurisdiction, and necessitating requests for imperial legislation whenever the rapidly changing conditions of a new country may require them.'

On March 20 it was announced that the educational clauses would be modified. The original bill enacted that section 93 of the British North America Act should apply to the new provinces. Section 93 provides that the provinces shall have the right to make laws in regard to education, but not to affect prejudicially any right to denominational schools existing ' at the union ' ; and that the minority shall have a right of appeal to the governor-general in council and to remedial legislation if necessary. By the bill as at first introduced the words ' at the union ' were to be taken to mean ' at the date of the Autonomy Bills coming into force.'

By the amended sections, section 93 of the British

North America Act was introduced in a modified form as follows :

'Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of person has at the date of the passing of this act, under the terms of chapters 29 and 30 of ordinances of the North-West Territory passed in the year 1901, or with respect to religious instruction in any public or separate school, as provided for in the said ordinances.'

The effect of this clause was to remove all doubt as to the character of the system of religious education that was to be perpetuated. It was to be the system established by the North-West ordinances of 1901. These ordinances provided that the minority of the ratepayers in any district, whether Protestant or Roman Catholic, might establish a separate school, and be exempted from school assessment except for that school. No religious instruction was to be permitted in any school until one half-hour before the closing, and any child would have the privilege of withdrawing during religious instruction if its parents so desired.

It was argued by the advocates of the bill that the schools would be practically public schools, using only authorized text-books, taught by regularly licensed teachers, inspected by public-school inspectors, and in every respect under complete public control. From this time the argument took this form : The defenders of the measure laid stress on the improvement involved in the amendment. Its opponents took strongly the ground of provincial rights. They declared that the matter ought to be decided by the people of the new provinces, not by the Dominion parliament. On the constitutional side of the question they fortified their case by the opinion of an eminent Ontario lawyer, Christopher Robinson, K.C., who thought that the right of the Dominion parliament to impose restrictions on the new provinces with regard to education was not beyond question, and that at all events parliament was not constitutionally bound to impose any such restriction. If section 93 of the Confederation act applied, there was no need to re-enact it. If it did not apply, no such enactment was otherwise necessary.

> Upon the whole I am of opinion that section 93 does not apply to the Provinces now about to be established. Its provisions would appear to me to be intended for and confined to the then provinces and to the union formed in 1867. There is not in any part of the North-West Territory as a Province any right or privilege with respect to denominational Schools possessed by any class of persons created by the Province or existing at such Union ; and a right subsequently established by the Dominion in the part now about to be made a Province does not appear to me to come within the enactment.

While the controversy was at its height two by-elections were held in Ontario : in North Oxford, where a vacancy was created by the death of the Hon. James Sutherland, minister of Public Works, and in London, where the Hon. Charles S. Hyman presented himself for re-election as minister of Public Works. These elections were of national importance, and speeches were made during the campaign by F. W. G. Haultain, by Walter Scott, who it was understood would be premier of the new province of Saskatchewan, by the Hon. Frank Oliver, the new minister of the Interior, and by R. L. Borden, leader of the opposition. It was recognized that the result would seriously affect the standing of the government and perhaps decide its fate. On June 13 the elections were held and the government was sustained. In London its candidate had a majority of 330, as compared with 123 in 1904. In North Oxford the majority was 338, as compared with 1502 in 1904. London had been an uncertain constituency, electing now a liberal and now a conservative. North Oxford had been strongly liberal since Confederation. Taking the two results together, the government had lost some ground, but as it held both ridings by substantial majorities, its supporters breathed more freely, and felt that the danger was past.

In August and September the organization of the new provinces was completed. A. E. Forget, who had been lieutenant-governor of the territory since 1898, was made Lieutenant-Governor of Saskatchewan, and the Hon. G. H. V. Bulyea, a member of the executive council of the territory, became Lieutenant-Governor of Alberta. Appropriate cere-

monies were held at Regina and Edmonton, the provisional capitals, which afterwards became the permanent capitals. The governor-general, Sir Wilfrid Laurier and other distinguished persons took part. The next step was the selection of persons to form the first government of each province. The choice in the case of Alberta fell upon Alexander C. Rutherford, leader of the liberal party in the province. In Saskatchewan the first premier was Walter Scott, who had represented Assiniboia in the Dominion parliament. There was much adverse criticism of the latter appointment, as ignoring the claim of Haultain, who had taken so prominent a part in the public life of the territory and had been the chief advocate of autonomy. The defence was that Haultain had been in the front of the fight against the educational clauses of the autonomy bill and that his appointment would have prolonged litigation and disturbance. The truth is that both appointments were political, that they were virtually made by the Dominion government, and that care was taken that the new premiers should be politically in harmony with that government.

Preparations were immediately made for the first general election under the new order. On November 9 the elections in Alberta resulted in an overwhelming victory for the new government, which had twenty-two supporters in a house of twenty-five. In Saskatchewan, where Haultain led the opposition, there was a harder struggle. Archbishop Langevin of St Boniface created a sensation by intervening on behalf of the government and denouncing Haultain as an enemy of the Roman Catholic Church. The election held on December 13 resulted in the return of sixteen liberals and eight 'Provincial Righters.'

A Salary Bill

Another measure which aroused much public interest in 1905 increased the indemnity of members of parliament from $1500 to $2500, and the salary of the prime minister from $8000 to $12,000, gave a salary of $7000 to the recognized leader of the opposition, and established a system of pensions

for ministers ; the pension to be paid to every person who had served five years as a cabinet mininster, and to be one-half of the salary attached to the office at the time of retirement. The salaries of judges also were increased. The increase in the salaries of judges was not harshly criticized, and there was general approval of the increase of the salary of the prime minister. But the other proposals were keenly criticized in the country, although in parliament they were passed into law without division.

It may be noted that the sessional indemnity was fixed at Confederation at $600 ; it was increased to $1000 in 1873, when there was also a general increase of salaries of ministers, lieutenant-governors and judges. It was increased again in 1901 to $1500. At this figure it had stood for several years. The cost of living had largely increased in that time ; but it was argued that so great an addition as $1000 virtually converted the indemnity into a salary, and to that extent made politics a profession. Upon this basis it was both attacked and defended, the defence being that a young country with no leisured class must pay for the services of its public men.

There was also some adverse criticism of the payment of a salary to the leader of the opposition. The attack was based upon the contention that it would slacken his zeal in criticism. On the other hand, it was maintained that as the salary came from the country it placed the leader of the opposition under no obligation to the government; that it was necessary that the leader should obtain an income from some source; and that it was better that he should receive it from the country whose servant he was than from corporations or private individuals who might be interested in the fortunes of his party. Criticism of the pension scheme assumed such formidable proportions that it was withdrawn in the following year. One result of the payment of the salary to the leader of the opposition was that R. L. Borden took up his residence at Ottawa. Ottawa thus became a centre for the political activity of the opposition. Experience has demonstrated that the opposition has been strengthened, not weakened, by making its head the recipient of a salary from the country.

The Lord's Day Act

The Lord's Day Act was one of the principal measures of 1906. An Ontario law regulating the observance of the day had been voided by the Judicial Committee of the Privy Council because it assumed to deal with criminal law, which was under federal jurisdiction. At the same time the growth of the business of transportation had increased the amount of Sunday labour, and in some parts of Canada there was a tendency to relax the Puritan strictness which had once marked the observance of the day, and to indulge in excursions and other amusements.

In order to check these tendencies the Lord's Day Alliance applied to the government and parliament of the Dominion, and succeeded in placing on the statute book a law forbidding Sunday labour and Sunday transportation with certain exceptions, such as the conveyance of travellers, and the continuance to their destination of trains and vessels started on some day other than Sunday. Sunday amusements were restricted by forbidding excursions, and performances for which an admission fee was charged.

In the House of Commons the law was attacked as an infringement of provincial rights. This objection was urged especially by members from Quebec, where Sunday had been observed much less strictly than in Ontario. The objection was not sustained, but in the Senate a provision was inserted practically saving provincial rights by enacting that no action or prosecution should be commenced without the leave of the attorney-general of the province concerned. It was also contended, but without avail, that the law was a violation of the liberty of the subject.

Armed with this law the Lord's Day Alliance made a vigorous attack upon Sunday labour, Sunday buying and selling, and Sunday amusements. Its officials claimed that they had preserved the day of rest for large numbers of workmen, especially upon railways. Considerable opposition, however, was aroused by attempts to prevent Sunday amusements and the sale of refreshments. It was contended that these

prohibitions were made not in the interest of workmen, but to enforce the religious opinions of one part of the population upon another. In order to voice this protest a Rational Sunday League was formed in Ontario.

The Department of Labour

The labour legislation of 1906-7 was a development of a policy extending over several years. In 1900 there had been established a department of Labour. A separate portfolio was not created, but the postmaster-general, then Sir William Mulock, who was deeply interested in labour questions, became also minister of Labour. Provision was made for the settlement of labour disputes by the minister and by boards of conciliation. At the same time the *Labour Gazette* was established for the publication of industrial information. W. L. Mackenzie King was made deputy minister of Labour, and had much to do with working out and developing the policy of the department. The act of 1900, so far as it provided for the work of conciliation boards, was modelled on English legislation, and did not appear to meet the needs and conditions of Canada. But it brought the department into close touch with industrial matters.

In 1903 legislation was enacted for the settlement of disputes between railway companies and their employees. It provided for methods of conciliation and arbitration somewhat different from those of the act of 1900. It recognized the principle that the public inconvenience and possible danger from the interruption of railway service constituted a special reason for intervention by the government. This idea was further developed in the legislation introduced by the Hon. Rodolphe Lemieux as minister of Labour in 1907. A prolonged strike of coal miners at Lethbridge, beginning in March 1906 and continuing during the summer and autumn, had caused a serious shortage of fuel throughout Alberta and Saskatchewan during the winter of 1906-7. The investigation made by the deputy minister, prior to the settlement of this dispute, led him to recommend the enlargement of the scope of the law. The Lemieux Act applied not only to

railways, but to mines, and to all utilities connected with transportation and communication, steamships, telegraphs, telephones, gas, electric light, water and power works. So far as these were concerned, the act was compulsory, that is, it was made illegal to declare a strike or lock-out until the matter in dispute had been investigated by a Board of Conciliation, to be established by the minister of Labour on the application of either party. It was provided also that employers and employees must give at least thirty days' notice of an intended change affecting the conditions of employment. Any kind of labour dispute, though not relating to the utilities specified, could be referred by consent to a board of conciliation, and the machinery of the act could be used for the purpose of obtaining a settlement.

In 1908 it was announced that the department of Labour would be separated from that of the postmaster-general and placed under a distinct head. W. L. Mackenzie King, who had been deputy minister since the department was organized, resigned that office and became a candidate for the House of Commons in the general election of 1908, upon the understanding that he was to be appointed minister of Labour. He was elected for North Waterloo, and in June 1909 his appointment as minister was made.

Old Age Annuities[1]

The legislation of 1908 included provision for a system of annuities for old age. Under this system contributions may be made by the annuitants at all ages from five years, and the whole sum contributed, whether paid regularly or otherwise, is returned in the form of an annuity, with four per cent compound interest. The annuitant thus obtains several advantages. He has perfect security, and freedom from lapses and forfeitures; the methods are flexible, allowing of payments in a variety of ways, and even of irregularity in payment; the rate of interest paid is comparatively high; the whole expense of administration is borne by the government. The legislation was introduced by Sir Richard Cart-

[1] See 'The Federal Government,' p. 342 in this section.

wright, and the system was placed under the management of S. T. Bastedo. Lecturers were engaged and an energetic campaign conducted on the platform and in the press.

Charges of Maladministration

As it was generally believed that the session of 1907-8 would be the last before a general election, it was highly contentious in character. H. B. Ames, conservative member for St Antoine division, Montreal, made a series of charges of favouritism in connection with the granting of timber limits in the West. The general line of defence was that until recently the policy of both parties had been to grant licences on very liberal terms, the main object being to get timber cut for settlers for building and other purposes. In December 1907 somewhat stricter regulations had been adopted.

Out of these charges arose a parliamentary quarrel over the production of documents in the departments. Ames demanded certain originals on file in the department of the Interior. Frank Oliver, the minister, held that the practice of producing originals would derange public business, and that the utmost he could do would be to have such papers produced before a parliamentary committee in custody of an officer of the department. The premier held that specific reasons must be given for the production of a particular paper. The dispute waxed so warm that the leader of the opposition moved a resolution declaring that the refusal to produce originals warranted the withholding of supplies. Finally the matter was ended by a declaration from the premier that Ames had given reasons sufficient to comply with the condition the government had laid down.

In the session of 1907-8 G. O. Alcorn, conservative member for Prince Edward County, Ontario, introduced a bill for the prevention of fraud and corruption in elections. This bill forbade the offer of public expenditure for the purpose of influencing elections and also forbade government officials and contractors from taking part in election campaigns. The government, while not willing to accept Alcorn's bill, recognized the necessity for a stricter law. In March 1908

Allen B. Aylesworth, minister of Justice, introduced a bill amending the Dominion Elections Act. He proposed that (1) contributions to election funds must be made to the statutory agent of the candidate, and the amount and source must be stated; (2) companies or corporations should be forbidden to contribute to such funds; (3) the circulation of false statements regarding a candidate's character or personal conduct should be punishable; (4) aliens should be forbidden to interfere in election contests; (5) heavier penalties should be imposed for tampering with ballots.

The very important issues raised by these bills were somewhat obscured by a violent party quarrel which arose over a provision for a certain measure of federal control over the Manitoba lists. This departure from the liberal principle of using the provincial lists for federal purposes was defended upon the allegation that the Manitoba government had made the law and manipulated the lists so as to favour the conservative party. The opposition at Ottawa denied that the provincial lists were unfair, obstructed Aylesworth's bill, and delayed the granting of supplies. As the elections were drawing near the parliamentary fight was exceedingly bitter. Finally, by conferences between the premier, the leader of the opposition, and Robert Rogers, a member of the Manitoba government, a compromise was arranged whereby the polling divisions were to be defined by the county judges. An amendment moved by George E. Foster, aimed at the practice of offering public works as bribes to constituencies, was rejected. The other provisions of the bill became law.

Civil Service Reform

During this parliament there was much public discussion upon the necessity for reform in the civil service, and especially upon the evils of patronage and political influence. In the spring of 1907 J. M. Courtney, for many years deputy minister of Finance, had publicly advocated a system of appointment by competitive examination and of promotion by merit. On May 8, 1907, the government appointed a commission composed of J. M. Courtney, Thomas Fyshe, at one time

manager of the Merchants' Bank of Canada, and Philippe J. Bazin of Quebec, to inquire into the working of the civil service. The report of this commission, which was submitted in February 1908, was a sweeping condemnation of the existing system. It was declared that the Civil Service Act was too long and involved. There was a constant effort to evade the examinations which the law required. The party use of patronage ran through every department. Promotions within the service were rare. The ambitions of officials were checked. Salaries were too low, having regard to the increased cost of living. Regret was expressed at the repeal of the law providing for superannuation, and the enactment of a new and improved superannuation act, including provision for the support of widows and children of deceased public servants, was advocated. The recommendations were for thorough reform, including the liberation of the system from patronage and political favouritism.

Two results followed from this investigation. A government measure for reform of the civil service was introduced by Sydney A. Fisher, minister of Agriculture. It placed the inside civil service, that is, the officials at Ottawa, under an independent civil service commission, and made the entrance open to competitive examination. Nominations were to be in order of merit, under control of the commission. At the suggestion of R. L. Borden the tenure of office of the commissioners was made the same as that of the Dominion auditor and of the judges. They were to hold office, not at the pleasure of the government, but during good behaviour.

In the second place, the censures of the commissioners on the department of Marine and Fisheries were so severe that a second commission was issued to Justice Cassels, of the Exchequer Court of Canada, to inquire into such statements in the report as reflected on the integrity of officials. His investigation showed that certain officials had been in the habit of taking commissions from contractors. In consequence of these damaging revelations many officials were dismissed.

The Halifax Platform

The charges which have been referred to occupied the public mind largely from 1906 to 1908, and some knowledge of them is necessary to understand the declaration of principles issued by R. L. Borden as leader of the opposition in August 1907, and the course of the campaign preceding the election of 1908. The declaration, which was known as the Halifax Platform, called for provincial autonomy, civil service reform with appointment by merit, reform of the Senate, honesty in public expenditure, more effective punishing of bribery and fraud in elections, enforced publicity as to expenditures by political organizations, prohibition of contributions by corporations, contractors and promoters to campaign funds; prohibition of 'saw-offs,' that is the withdrawal of one election petition as the consideration for withdrawing another; and the appointments of independent officers for the prosecution of offences committed in elections. Another group of proposals related to transportation and other public utilities. They included the placing of government railways under an independent commission; the improvements of waterways and ports; better facilities for cold storage; the creation of a public utilities commission; the nationalization of telegraphs and telephones; and provision for rural mail delivery. Trade and commerce were represented by a declaration for moderate protection and for preferential trade within the Empire.

The Election of 1908

In the summer of 1908 the parties prepared for the general election. The government relied upon the abounding prosperity of the country, the growth of immigration and settlement and the rapid progress of the West, and upon such legislation as the establishment of the Railway Commission, the organization of the labour department, the act for the settlement of labour disputes, the creation of a system of old age annuities and the legislation for the reform of the civil service. The opposition relied upon the chief features of

the Halifax Platform, and dwelt upon the charges of fraud and corruption which had been made in the previous three years. These charges were not without effect on the public mind, but the attack along this line lost something in effectiveness from the fact that public attention was not concentrated upon any one charge, as it had been in the case of the Pacific Scandal of 1873. The country was prosperous, and the facts relating to prosperity were steadily kept before the electors by the press and speakers on the government side. The appointment of a civil service commission helped to reassure those liberals who had been shocked by the revelations of wrongdoing in some of the departments at Ottawa.

As it was morally certain that the government would have an overwhelming majority in Quebec and a fair majority in the Maritime Provinces and in the West, the only hope of the opposition lay in the possibility of an overwhelming conservative majority in Ontario, a hope which was encouraged by the two victories won by the provincial conservatives under James Pliny Whitney (afterwards Sir James) in 1905 and in 1908. The government therefore concentrated its strength on Ontario, and in pursuance of that policy Sir Wilfrid Laurier abandoned his trip to the West. By these means the liberals succeeded in electing a fair number of representatives in Ontario, and the safety of the government was assured. There was, in fact, no ground for the expectation that the province would vote in a Dominion election in the same manner as it had voted in provincial elections. During all the time that the conservatives were in power in the Dominion, from 1878 to 1896, there was a liberal majority in Ontario. When the conservatives won their great victory on the National Policy in 1878, many of them hoped that Mowat would be overthrown in Ontario, but this expectation was not realized. Soon after the liberals came into power at Ottawa they began to lose their hold on the government of Ontario. It was said that there was a disposition on the part of some electors to maintain a balance of power by keeping one party in office at Ottawa and another at Toronto. At all events, victory in one field gave no assurance of victory in the other, as was repeatedly proved by experience. The govern-

ment emerged from the contest with a majority diminished, but large enough for working purposes.

The Canadian Navy

The naval defence of Canada had for some years been a matter of controversy. As to land defence the country was becoming by a process of evolution self-supporting, and in the South African War Canada had given the mother country aid. There was a strong feeling, that with its wealth and prosperity Canada ought not to depend upon Great Britain for naval protection, or ought at least to share the burden of naval defence. The problem of autonomy stood in the way. It was easy to provide that a land force should be under local control. But it was argued that, with a navy, rapid mobilization and power of centralization were essential to efficiency. Yet there was a reluctance to settle the difficulty by a mere payment of money to the British Treasury, and at the same time Canadian governments hesitated to undertake so large an enterprise as the forming of a Canadian navy. The result was that for some years nothing was done. In the spring of 1909 disquieting statements as to the relative naval strength of Great Britain and Germany were made in the British House of Commons. The gist of the statements was that Germany was overtaking Great Britain in naval power and would soon be in a position to dispute British supremacy on the sea. The prospect of having so close a neighbour with a fleet of equal strength with that of Great Britain and with by far the most powerful army in the world aroused intense anxiety in England. A demand arose for more 'Dreadnoughts,' the name of the type of gigantic battleships which it was said was superseding all other types. It was argued also that if the British colonies undertook to build Dreadnoughts or contribute their price to the British Treasury, Germany would see that the whole British Empire could be drawn upon, and would hesitate to enter into such a competition.

The movement for the contribution of Dreadnoughts made some headway in Canada before the matter was debated in parliament. The debate occurred upon a motion by George E.

Foster. It declared that Canada ought to provide for the defence of her coast. This form was due to the fact that the notice of motion had been given before the Dreadnought alarm had been raised. Foster offered to support the government in contributing Dreadnoughts to meet the present emergency. But as a permanent policy he argued strongly in favour of a Canadian navy as against the contribution of money to the imperial navy. He objected to a money contribution because it had the appearance of hiring somebody to do what Canadians ought to do themselves. If, he said, Canada followed this plan for thirty years, she would pay out a large sum of money and she would be protected. But in Canada herself there would be no roots struck, no preparation of the soil, no beginning of the growth of defence ; while with Canada's resources and population she must have a naval force for coast and home defence. He wanted to see something planted in the soil of Canada's nationhood. There must be beginnings and these beginnings must be small. He favoured the policy of Canada assuming the defence of her own ports and coasts in constant and free co-operation with the imperial forces.

A resolution setting forth the policy of the government was moved by Sir Wilfrid Laurier. Some amendments suggested by the leader of the opposition were accepted, and the resolution was adopted unanimously in this form :

> This House fully recognizes the duty of the people of Canada as they increase in numbers and wealth, to assume in larger measure the responsibilities of national defence.
>
> This House is of opinion that under the present constitutional relation between the Mother Country and the self-governing Dominions, the payment of regular and periodical contributions to the Imperial Treasury for naval and military purposes, would not so far as Canada is concerned be the most satisfactory solution of the question of defence.
>
> This House will cordially approve of any necessary expenditure designed to promote the speedy organization of a Canadian naval service in co-operation with and in close relations to the imperial navy, along the lines suggested by the Admiralty at the last Imperial Confer-

SIR WILFRID LAURIER

From a photograph by [illegible]

ence, and in full sympathy with the view that the naval supremacy of Britain is essential to the security of commerce, the safety of the Empire, and the peace of the world.

The House expresses its firm conviction that whenever the need arises, the Canadian people will be found ready and willing to make any sacrifice that is required to give to the imperial authorities the most loyal and hearty co-operation in every movement for the maintenance of the integrity and honour of the Empire.

The apparent unanimity of the House of Commons did not reflect the feeling of the country. The government policy was opposed on various grounds. One element, whose views were expressed by Sir James Whitney, the conservative premier of Ontario, would have preferred that Canada should contribute the cost of one or two Dreadnoughts to the defence of the Empire. Another element objected both to a Canadian navy and to a contribution to the imperial navy, regarding both proposals as concessions to the military and imperial spirit. A third opinion was that the two policies should be combined—Dreadnoughts or their value to be given as an emergency contribution, and a Canadian navy to be organized as a permanent policy. In some quarters the government policy was attacked on the double ground that it was expensive for Canada and useless to the Empire.

In the summer of 1909 a conference was held in London to discuss the military and naval defence of the Empire. Canada was represented by Sir Frederick Borden, minister of Militia, and L. P. Brodeur, minister of Marine and Fisheries. The British Admiralty in a memorandum pointed out that the maximum of power for a given expenditure would be effected by all the parts of the Empire contributing according to their needs and resources to the maintenance of the British navy. But it recognized that the national sentiment of the larger Dominions required the creation of local naval forces which would contribute immediately to imperial defence and at the same time serve as foundations for Dominion navies. The Admiralty suggested that a Dominion government desirous of creating a navy should aim at forming a distinct fleet unit, to consist of at least one Dreadnought

cruiser, three armoured cruisers, six destroyers and three submarines. Emphasis was laid upon the advantage of unity of command and direction. It was recommended that there should be one common standard for the central and Dominion fleets in regard to shipbuilding armament and warlike stores, training and discipline.

The creation of a fleet unit was attended with special difficulties in the case of Canada. Canada, unlike any other part of the British Empire, has two coasts separated by the width of a continent, and requiring two distinct systems of naval defence. Three courses were possible : (1) to establish two fleet units, one on each coast : (2) to have a single unit, and to place this unit on the Pacific or on the Atlantic coast ; (3) to divide the fleet between the two, giving each something less than a fleet unit. The first course was apparently not considered. The second was the proposal of the British Admiralty, which would have preferred to have the entire force on the Pacific side. The third was that finally decided upon. It involved an expenditure of three million dollars a year by Canada, and provided for the maintenance of four cruisers of the ' Bristol ' class, one cruiser of the ' Boadicea ' class, and six destroyers of the improved ' River ' class. Two of the Bristols were to be stationed on the Pacific, and the rest of the fleet on the Atlantic coast. In January 1910 Sir Wilfrid Laurier introduced the Naval Service Bill, sketched the history of the imperial conference of the previous summer, described the force to be created, and laid stress upon the purely voluntary character of the service.

There was no longer any appearance of unanimity in parliament, and the bill was severely criticized and attacked from several sides. R. L. Borden in an amendment set forth that the government measure did not follow the proposals of the Admiralty ; that there was a dangerous suggestion that the naval forces of Canada might be withheld from those of the Empire in time of war ; that the proposed navy would be expensive and ineffective ; that no permanent naval policy should be carried out until submitted to the people ; and that in the meantime there ought to be placed at the disposal of the imperial authorities, as a free and loyal

contribution, an amount sufficient to purchase two Dreadnoughts. The suggestion that the matter ought to be referred to the people in a plebiscite was put more pointedly in an amendment moved by Frederick Monk, a leading French-Canadian conservative member. Monk's speech, though moderate and argumentative in tone, was strongly anti-imperial and foreshadowed the violent agitation which was afterwards carried on in the Province of Quebec.

The question was new and difficult, public opinion was divided, and the government, striving to take a course which would unite the country, was attacked both by imperialists and by anti-imperialists. The crucial question was the position which the Canadian navy would occupy in time of war. The naval bill provided that the navy should be under control of parliament ; that it might, in emergency, be placed at the disposal of the British government, by the government of Canada, if parliament were not sitting ; but that parliament must at once be summoned. Many questions were asked as to what constituted such an emergency as would bring the Canadian navy into full co-operation with the British navy. Sir Wilfrid Laurier said that when the Empire was at war, Canada was at war ; but that there were confiicts in which it would not be necessary for Canada to engage ; he instanced the Crimean War. Later in the session details of the organization of the navy were given. There had been purchased from the British government the *Niobe*, a cruiser of 11,000 tons, with 33 guns and 2 Maxims, with 40 officers and 659 men, and the *Rainbow*, a cruiser of 3600 tons, with 18 guns and 4 Maxims, with 17 officers and 252 men.

In the Province of Quebec an agitation against the navy was set on foot by Henri Bourassa early in 1910, and carried on vigorously. The results were seen in the Drummond and Arthabasca election in October. The constituency was rendered vacant by the resignation of Louis Lavergne, appointed to the Senate. The government candidate was J. E. Perrault ; he was opposed by Arthur Gilbert, a farmer, who described himself as a liberal but opposed to the navy. The nationalists conducted a fiery campaign. They declared that the government had surrendered to the imperialists.

They persistently averred that there would be conscription for the Canadian navy, and drew harrowing pictures of the habitant torn from his family and dragged on board the ships to fight the enemies of England.

On November 3 the nationalist candidate was returned by a majority of 207. The result was a surprise to the country, and newspaper speculations as to its meaning took a wide range. The liberal newspapers treated it as a blow at national unity, and urged that an educative campaign should be carried on in Quebec, to explain the true character of the naval law, and to reconcile French Canadians to its provisions. The conservative papers saw in it a blow at the prestige of Sir Wilfrid Laurier, and a disappearance of the 'Solid Quebec' which had supported him. Sir Wilfrid Laurier addressed a letter to *La Presse* of Montreal, laying stress upon the fact that there was no conscription, and that Canadian autonomy was amply protected.

The Fisheries Question [1]

During the summer of 1910 the Hague Tribunal, a permanent international court established by the persistent efforts of advocates of peace, considered the differences which had arisen in connection with the use of the Atlantic fisheries of Canada and Newfoundland by the fishermen of the United States. The submission of this question to the Hague Tribunal was important in two aspects. It provided a means of settling differences which had arisen at intervals during a century and a quarter. It also recognized and strengthened the authority of the tribunal, aided in the development of international law, and gave an impulse to the movement for the substitution of arbitration for war. A brief history of the fisheries question will be convenient at this point.

The treaty of peace made after the close of the American Revolution in 1783 allowed the people of the United States 'to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all the other banks of Newfoundland, and also in the Gulf of the St Lawrence and at all the other places in the sea where the inhabitants of both countries used

[1] See 'The Fishery Arbitrations' in this section.

at any time heretofore to fish.' This provision has been criticized severely as a weak surrender to the United States. It must be remembered, however, that Great Britain was not at this time in a position favourable to the strict enforcement of her rights. It is to be borne in mind, also, that the Americans have at various times put forward a moral claim to the use of the fisheries. They claimed that they had discovered, exploited and developed the fisheries while they were British subjects, and also that they had assisted in the taking of Canada from the French, an event which at the time of the Revolution was less than twenty years old. Before that time, from the first settlement of the New England colonies, the fisheries of Canada and Newfoundland had been a source of living to British colonists in Massachusetts and other New England states. They considered that these fisheries had been won by their enterprise and by their courage in facing the dangers of war and of the sea. In 1783 they maintained that their rights to the use of these fisheries were even stronger than those of the new British subjects in Nova Scotia.

After the War of 1812-14 Great Britain contended that the American fishing rights had been forfeited by war, while the Americans contended that they held those rights in perpetuity, in the same way that they held their independence. As no agreement could be reached the Treaty of Ghent was silent on this point. In 1818 Great Britain and the United States made a new agreement called the London Convention. Great Britain was now in a strong position. Her great life-and-death struggle was over, and Napoleon was a prisoner at St Helena. She was now in a position to dictate terms, and the convention of 1818 was less favourable to the United States than the treaty of 1783. Nevertheless, without admitting the extreme contentions of the United States, Great Britain conceded the liberty to fish in certain waters, on condition that the United States renounced the right to fish elsewhere. The fishing limits assigned to the United States were the shores of the Magdalen Islands and that part of the north shore of the Gulf of St. Lawrence extending from a point nearly opposite the Métis end of the island of Anticosti to the intercolonial boundary between Canada and New-

foundland, at about the southern entrance to the Strait of Belle Isle. In other words, the Americans retained fishing liberties in portions of Newfoundland, Quebec and Labrador, and renounced the right to fish in Nova Scotia, New Brunswick and Prince Edward Island. The renunciation clause was as follows :

> And that the United States renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours on Her Britannic Majesty's Dominions in America not included within the above-mentioned limits.

Out of this clause arose the momentous questions, ' What is a bay ? ' and ' How are three marine miles from a bay to be measured ? ' The American claim was that their fishermen could follow the sinuosities of the coast, and could fish at any point within a bay so long as they kept three miles from the coast. They could thus enter any bay that was more than six miles wide at the mouth and proceed until they reached a point three miles from the shore.

The Hague Tribunal decided (substantially in accordance with the British contention) that in the case of bays the three marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. This means that each bay must be described and the place where it loses the configuration of a bay specified. As to this, the tribunal recommended the adoption of the delimitations given in the rejected treaty of 1888. Where the bay is not specified by name the rule is to draw the line three miles seaward from the first point where the width does not exceed ten miles. Two bays were excluded from the decision by previous agreements —the Bay of Fundy, at the instance of the Americans, and Hudson Bay at the instance of the Canadians. As to the latter the treaty says, ' saving the rights of the Hudson's Bay Company,' and it was thought better that there should be no appearance of questioning those rights, which had been asserted by Canadian legislation.

Another question was whether a Canadian or Newfound-

land law passed with regard to the fisheries enjoyed in common should be binding on the fishermen of the United States. The United States contended that Canadian regulations (apart from the prohibitions of the criminal law) did not bind their fishermen. They even went so far as to contend that the United States had a better right to legislate with regard to these waters than Great Britain, and could even send armed vessels into Canadian harbours to protect the rights of American fishermen. They contended that the liberties of fishery granted to the United States constituted an 'international servitude' in their favour over the territory of Great Britain, thereby involving a derogation from the sovereignty of Great Britain, and that thereby Great Britain is deprived, by reason of the grant, of the independent right to regulate the fishery.

The tribunal said that the right of Great Britain to make regulations without the consent of the United States in the form of municipal laws, ordinances or rules is inherent to the sovereignty of Great Britain. The exercise of that right by Great Britain was, however, limited. The regulations must be bona fide and must not be in violation of the treaties. In this case the words of the British contention were adopted. It was declared that regulations must be appropriate or necessary for the protection and preservation of fisheries, or desirable or necessary on the ground of public order and morals; they must not unnecessarily interfere with the fishery itself, and they must be equitable and fair as between British and American fishermen. As to existing fishery laws, it was declared that the United States may give notice to Canada of enactments which they contend are opposed to the true meaning of the treaty. The tribunal, instead of deciding this point, referred the regulations to a board of experts who were to report to the tribunal. Sir Allen Aylesworth, in explaining the decision to the house, said that having regard to time, labour and expense, he did not desire to see the tribunal meet again in this case, as he trusted the matter could be settled by negotiation. This hope has been realized by an arrangement arrived at between Canada and the United States.

Reciprocity

The revival of the question of reciprocity was due to two causes, one arising in Canada and the other in the United States. In the summer of 1910 Sir Wilfrid Laurier made a tour through the prairie provinces. He met a number of deputations of farmers who made requests for legislation of various kinds, and among these requests reciprocity had a prominent place. In December of the same year a very large delegation of farmers from Ontario and the West visited Ottawa, and again the demand for a reciprocity agreement with the United States was strongly pressed. In reply to the delegation Sir Wilfrid Laurier said : ' At this moment we are negotiating with the American authorities to do this very thing you ask for—to improve our commercial relations with our neighbours.' He added : ' I think that if we can improve the relations in the direction of having more markets for natural products and farm products, the country will be immensely benefited.' There would be more difficulty in regard to manufactures. Finally he said : ' The country is ready to respond fully to the advances that are made to us for reciprocity.'

It will be necessary now to go back to the previous year in order to show how the advance came to be made. The Payne Aldrich law, enacted by Congress in 1909, contained a maximum and a minimum tariff to be applied to the imports from various countries according to their treatment of imports from the United States. Substantially, Canada was entitled to the minimum tariff, or at least to favourable treatment from its neighbour. Technically, by the terms of the law, the president might have been obliged to apply the maximum tariff. At the suggestion of President Taft the difficulty was overcome by the reduction of a few unimportant duties by Canada. At the same time it was intimated that there would be negotiations for a measure of reciprocity with the United States.

In the speech from the throne at the opening of the Dominion parliament on November 17, 1910, the negotiations were referred to in these terms :

> The desirability of more equitable tariff arrangements between the United States and Canada has been long felt on this side of the border. The commercial policy of the Republic has not hitherto favoured imports from Canada. We have bought largely from the United States, but they have bought less from us in return. It is gratifying to find that a more liberal policy is now favoured by the neighbouring country, and that the government at Washington express a desire to establish better trade relations with the Dominion. Following the negotiations which took place some months ago between the United States and my government, the results of which were at the time communicated to parliament, a further conference between representatives of the two countries has been held at Ottawa. While no conclusions have been reached, and no formal proposals made, the free discussion of the subject that has taken place encourages my government to hope that at an early day, without any sacrifice of Canada's interests, an arrangement may be made which will admit many of the products of the Dominion into the United States on more favourable terms.

The negotiations having been thus publicly and officially announced, it may seem strange that in the controversy which arose over the agreement, it was frequently stated that there was something surreptitious in the proceedings and that the intentions of the government were concealed.

The explanation is that the country was surprised by the extensive nature of the agreement. Some previous negotiations had come to nought because the Congress of the United States would not make extensive reductions in its own tariff. In 1891 the government of the United States stated clearly that an agreement relating to natural products alone would not be entertained. It was commonly supposed that the negotiations of 1911 would result in a similar way, and that the United States would be unwilling to make any reductions which would form an inducement to Canada. In the language commonly employed, they would want to 'take everything but give nothing.' There was therefore general surprise when it was found that the United States had agreed to admit most of the staple farm products duty free, and to admit

secondary farm products and some other articles at very low rates, identical with those to be imposed on the Canadian side.

On January 26, 1911, W. S. Fielding, minister of Finance, announced the result of the tariff negotiations with the representatives of the United States. The agreement was of a far-reaching character. It covered some manufactures; in the main it provided for absolute free trade in grains, fruits, vegetables and farm animals, and for reduced duties on meats, and other secondary farm products. The house and the country were surprised by the extent of the reductions, and especially by the fact that the representatives of the United States had agreed to free trade in natural products, involving the removal of very high duties on the American side.

The agreement was not a treaty. The proposed tariff changes were to be made by legislation in Canada and the United States which either parliament or Congress might repeal or modify at pleasure. No time was specified for the duration of the arrangement; but the hope was expressed that its benefits would be such that it would remain in operation for a considerable time.

The reversal of a policy which had prevailed in the United States since the abrogation of the Elgin Reciprocity Treaty in 1866 was due largely to the increase in the cost of living in the republic. The revised tariff of 1909 had disappointed the American people, who had expected greater reductions in the taxes on food and other necessaries of life. By reciprocity with Canada President Taft saw an opportunity of amending this error, improving the position of the republican party, and at the same time bettering the general commercial relations with Canada, whose rapid growth and prosperity had attracted widespread notice. The November elections had gone heavily against the republican party, owing to discontent with the tariff and to the high cost of living. In the new House of Representatives there would be a large democratic instead of a republican majority; but under the American practice the old members would hold their seats during one more session. The president was desirous of having the agreement ratified during that session, the last of

the 61st Congress. If this hope were disappointed he intended to call the new Congress immediately, in special session.

The agreement was one which a few years before would have been eagerly accepted by Canada. Both political parties were on record in favour of reciprocity in natural products. An offer of such reciprocity was attached to the protective or 'National Policy' tariff introduced in 1879, and remained there until modified by the tariff of 1894. The reason assigned for the dissolution of parliament by the Macdonald government in 1891 was the desire to obtain popular approval of negotiations with the United States for reciprocity in natural products. The strong opposition offered to unrestricted reciprocity at that time was based not upon commercial but upon political reasons; namely, that it would involve dependence upon Washington and discrimination against Great Britain.

But although neither party had expressly repudiated reciprocity, there had been a movement away from it. Canada had grown tired of seeking freedom of trade with her neighbour and receiving such replies as the Dingley and M^c^Kinley tariffs, increasing instead of lowering the duties on Canadian farm products. 'Cultivate the British market' became the watchword of Canadian public men, and this was emphasized by the British preference of 1897 and by the movement in Great Britain for a reciprocal preference in favour of the colonies. Even without such a reciprocal preference, Canada's position in the British market was much improved. Owing to this, and also to the remarkable growth of the home market of Canada, increased trade with the United States became relatively less important and less an object of desire to Canadians than it had been a few years before.

Hence, in spite of the unexpected liberality of the concessions made by the United States, the agreement was not received with unmixed satisfaction in Canada. The opposition was not entirely of a partisan character. Clifford Sifton, formerly minister of the Interior, made a strong speech against the measure, and was joined by two other liberal members of parliament, William M. German of Welland

and Lloyd Harris of Brantford. A large deputation of fruit-growers from the Niagara Peninsula went to Ottawa and protested against the removal of the duties on fruit, which they said would expose them to ruinous competition from the United States. The Toronto Board of Trade pronounced against the agreement by an overwhelming majority, and most of the Ontario Boards of Trade took similar ground. A protest against it was signed by eighteen Toronto liberals prominent in finance and commerce. They included Sir William Mortimer Clark, formerly Lieutenant-Governor of Ontario, John C. Eaton, head of the well-known departmental store business, Sir Edmund Walker, president of the Canadian Bank of Commerce, and W. T. White, vice-president of the National Trust Company.

The grounds of opposition were these : Having for many years been denied access to the market of the United States, Canadians had at great expense built railways and established lines of communication and trade running east and west. Large amounts of British capital had been invested in these enterprises, and this investment was still going on. Reciprocity with the United States would divert this trade into channels running north and south, and thus impair the value of the national investments in railways and check the inflow of British capital. With free wheat, milling would be diverted from Canada to the United States. There would be danger to the ports, the commercial and industrial cities and towns of Canada. The United States having drawn too largely upon their own natural resources would use those of Canada, which would thus be placed in the position of a hewer of wood and a drawer of water to its neighbours.

It was also urged that neither the farmer in Canada nor the manufacturer in the United States would be satisfied with an arrangement which covered mainly natural products. The farmer would demand that he should be as free to buy imported manufactures as others would be to buy imported farm products. The American manufacturer would demand free access to the markets of Canada, and in a few years the United States Congress might support him in this demand, and threaten to end the agreement unless it were extended to

manufactures. If Canada yielded, there would be so close a commercial union between the two countries that political union might follow. Canada was prosperous. Why not let well alone ?

It was argued on the other side that these fears were exaggerated, and that the inferences were too broad for the facts ; that trade conditions would be modified but not revolutionized, and therefore that there would be ample business for the transcontinental railway systems and for eastern and western trade as well as for trade north and south. Canadian farmers ought not to be denied access to the American market merely because of a fear that manufacturing industries might be affected at some future time. Experience and history showed that free commercial relations did not tend towards political union. No such result had been observed during the period of the Elgin Reciprocity Treaty. There was an annexation movement in 1849, but the Elgin Treaty, by producing prosperity and content, had destroyed annexation sentiment. It was pointed out that Canadian patriotism had already stood the test of a very extensive trade with the United States. Half of Canada's total trade was already done with that country. This trade had been trebled in twenty years, and in the same period there had been a stream of public opinion not towards but away from political union.

As the discussion proceeded the ground was in one respect shifted. There was at first a disposition on the part of the opponents of reciprocity to admit that it would result in greatly increased sales of Canadian farm products in the United States. But later on this admission was withdrawn. It was denied that the Canadian farmer would be benefited by the agreement, and it was contended that the Canadian market would receive the surplus products of American farms, and also of several countries which were entitled to favoured-nation treatment. This meant that the appeal was being made more directly to the material interests of farmers. At the same time the contention that reciprocity would eventually lead to political union was not abandoned, and in the end it proved decisive.

In the United States, also, much attention was paid to the farmer. Persons speaking or professing to speak on his behalf protested against the agreement as unfair, because it deprived the farmer of protection and exposed him to Canadian competition, while leaving untouched the heavy duties on manufactures and other articles consumed by the farmer. To meet this attack strong efforts were made by President Taft to prove that the American farmer would gain by the exchange of products with Canada.

This American controversy had a curious reflex influence on the discussion in Canada. The protests made on behalf of the American farmer were quoted by Canadian advocates of reciprocity, in order to show that the balance of gain would be in Canada's favour. The attempts to reassure the American farmer were used as evidence that the Canadian farmer would be injured by the agreement.

On February 14 the bill embodying the agreement was passed by the House of Representatives of the United States by a large majority. The bill was then transmitted to the Senate, and referred to the Finance Committee of that body. It had not reached its final stage on March 4, when the 61st Congress expired. On the same day the president called the new Congress, and a month later it assembled. The new Congress was different in composition from the old. The House of Representatives contained a large democratic instead of a large republican majority. In the Senate the democrats had gained somewhat on their opponents; they were about equal in number to the regular republicans, and there were about a dozen 'insurgents,' that is, republicans who held advanced views on the tariff and other questions and were not amenable to party discipline.

The bill was passed by the new House of Representatives on April 21. More opposition was encountered in the Senate. President Taft worked hard, and used all his powers of persuasion with the senators, but it was not until July 23 that the bill was passed. The majority was nearly two to one. Twenty-one republicans and thirty-two democrats supported the bill; twenty-four republicans and three democrats voted against it. The majority was therefore due to the democrats,

whose low-tariff opinions must have overcome their objection to helping a republican administration.

While the bill was making its way through Congress there were incidents which had an effect upon public opinion in Canada. Champ Clark, a leading democrat, who succeeded J. G. Cannon as speaker of the House of Representatives, made a speech in which he expressed a hope for the annexation of Canada. It was afterwards explained that the remark was jocular. A more serious matter was a speech made by President Taft at a banquet of the Associated Press and American Newspaper Association at New York on April 27, 1911. In this speech he confined himself strictly to trade relations, and declared that the talk of annexation was ridiculous. But, unfortunately for his own cause, he touched upon the question of imperial trade. He remarked :

> I have said that this is a critical time in the solution of this question of reciprocity. It is critical because unless it is now decided favourably to reciprocity, it is exceedingly probable that no such opportunity will ever come again to the United States. The forces which are at work in England and Canada to separate her by a Chinese wall from the United States and to make her part of an imperial commercial bond, reaching from England around the world to England again by a system of preferential tariffs, will derive an impetus from the rejection of this treaty, and if we would have reciprocity, with all the advantages that I have described, and that I earnestly and sincerely believe will follow its adoption, we must take it now or give it up for ever.

In another speech made at Atlanta, Georgia, the president made use of the expression, ' Canada is at the parting of the ways.' This phrase, and the passage quoted from the New York speech, were published repeatedly by Canadian newspapers, and were exceedingly effective weapons in the hands of the opponents of reciprocity.

The opposition to the agreement in Canada gathered strength. In the House of Commons it was resisted to the point of obstruction. In May an imperial conference was to be held in London, and three courses were open to the

prime minister. He might abandon the intention of attending the conference. He might go to England and allow the parliamentary discussion of reciprocity to proceed in his absence; or he might have parliament prorogued. The last course was adopted and parliament was prorogued.

When parliament met again in July the obstruction was renewed, and in a few days the government determined to abandon the attempt to carry the agreement in that parliament, and to appeal to the country. The nominations were fixed for September 14 and the elections for September 21. A hard battle followed. R. L. Borden had the assistance of Sir James Whitney, prime minister of Ontario, and his colleagues, and also of the conservative governments of Manitoba, British Columbia and New Brunswick. In Quebec the battle was fought over the navy rather than over reciprocity. Henri Bourassa made a strong campaign against the naval policy of the government, and on this point the Quebec conservatives and nationalists were in agreement.

The election resulted in a decisive defeat for the government and for reciprocity. Looking at the number of members elected on each side, the defeat did not appear to be overwhelming, the majority being less than that recorded in 1874, 1878, 1882 and 1904. But the remarkable fact was the enormous conservative majority in Ontario, which left the liberals with only a handful of members from that province.

There were several leading causes for this result. The country was exceedingly prosperous, and it had prospered under a policy which was regarded as being the reverse of that involved in reciprocity with the United States. 'Let well alone' was a powerful election cry. Manufacturers feared that reciprocity in natural products would be followed by reciprocity in the products of factories, and their workmen seem to have shared in this fear. The combined power of capital, as represented by the banks, the manufacturers and the railways, was directed against a proposal which threatened to disturb existing conditions.

But, above all, a majority of the electors adopted the view that the agreement with the United States involved political consequences; that its acceptance would have imperilled the

national independence of Canada, and would have given impetus to continental as opposed to British ideals. It was in vain that the liberals argued that trade and national destiny were not bound up together, that more than half the trade of Canada was already done with the United States, that this trade had trebled in twenty years, and that annexation sentiment, so far from growing in that period, had disappeared. The misgiving could not be removed. It was one of the elemental forces against which argument throws itself in vain. The result must have come about largely through liberals voting against reciprocity or refraining from voting. There is no reason to suppose that these voters doubted the patriotism of their leaders, or the sincerity of their assurances. But they were not assured, and they were determined to take no chances.

This distrust was partly due to the fact that the enlargement of trade was to be made by agreement, and involved joint legislative action, and a certain intermingling of the politics of the two countries. What was said in the United States in advocacy of the agreement strengthened Canadian public opinion against it, and this was especially true of President Taft's maladroit remark regarding the 'parting of the ways.' Even more the distrust was due to the geographical proximity of the two countries. Treaties have been made with France and other nations without raising the question of national independence, for the simple reason that the political union of Canada with France or any other country than the United States would be out of the question. But with a nation whose boundaries march with those of Canada for several thousand miles, a nation speaking a similar language, having in many respects like institutions, a nation from which Canada is receiving hundreds of thousands of immigrants, the fear of political union is easily aroused, and there is a tendency to be jealous and suspicious of anything which might possibly lead to annexation.

The rejection of the agreement was received in good part by the newspapers and public men of the United States, while in Canada those who had been foremost in opposing reciprocity hastened to give assurances that the decision

implied no ill-will to the republic, but was simply an expression of Canada's determination to go her own way.

The Nationalists

In the Province of Quebec the significant feature of the election was the strength of nationalism. The government, instead of sweeping the province as in the previous three elections, retained thirty-five seats out of sixty-five, the remainder going either to nationalists or to conservatives who had accepted the nationalist programme and owed their seats largely to nationalist votes. When the new government came to be formed nationalist influence was so powerful that the ministry was described with at least approximate accuracy as a conservative-nationalist coalition. Nationalism thus became an important factor in the political life of Canada.

The aims of nationalism as described by Olivar Asselin, in a pamphlet which is regarded as authentic, are :

> 1. In Canada's relations with the mother country, the greatest measure of autonomy consistent with the maintenance of the colonial bond.
> 2. In Canada's internal relations, the safeguarding of provincial autonomy on the one hand, and the constitutional rights of minorities on the other hand.
> 3. The settlement of the country with a sole view to the strengthening of Canadian nationhood.
> 4. The adoption by both the federal and provincial governments of provident, economic and social laws, that the natural resources of the country may be a source of social contentment and political strength.

As to imperial relations, the nationalist view is that little change is required. An imperial parliament is regarded as impracticable. The colonial conferences are approved, with the reservation that their decisions must not be regarded as binding on the participants. The best service Canada can render to the Empire is to strengthen Canada. A false imperialism may result in grave perils. 'Let us,' says Henri Bourassa, 'before all and above all be Canadians ; let us English-speaking and French-speaking Canadians unite our forces, let us develop our resources, let us build up a great

country in which the rights of all shall be respected, let us carefully guard our autonomy and we shall be rendering the best service, not only to Canada but to the whole Empire. That is the aim of the nationalist movement.'

British preference is approved with the conditions (1) that the agreement may be terminated if convenient, and (2) that the normal growth of Canadian industries be not hindered. The latter condition the nationalists regard as an insuperable barrier to a fiscal zollverein; that is, they do not think it possible to give any great advantage to British imports without interfering with the normal growth of Canadian industries.

As to defence, the nationalist opinion is that a colony does its full duty by providing for the defence of its own territory. It is generally opposed to Canadian participation in wars outside Canada, holding that Canada is under no obligation of this kind, and also that it is impossible for Canadians to form a sound judgment as to the justice of every war in which Great Britain may engage. It was opposed to the sending of Canadian contingents to South Africa and to the naval organization adopted by the Laurier government.

Nationalists take strong grounds as to the rights of the French and Catholic minority. They hold that in education the provincial authorities are not supreme, but that 'the Canadian constitution explicitly ensures the right to separate schools—that is, national schools with religious teaching—to the Protestants in Quebec and to the Catholics in Ontario or other provinces.' Any minority, they say, has the right to set up separate schools, in which they can teach their own religious beliefs while complying with state standards of secular education. The condition they attach is that the teaching is not subversive of social order or fealty to the state.

As to language, they hold that French is one of the official languages of the whole country. During a discussion on bi-lingual schools in Ontario, Armand Lavergne, a leading nationalist, said: 'I firmly believe that we are entitled by the treaties and by the British North America Act to bi-lingual schools in all parts of the Dominion.'

Nationalists favour the filling up of the West with native-born Canadians rather than with immigrants. The national-

ization of railways and the conservation of public resources are parts of their programme which are not often discussed. Their opposition to an advanced imperialism, and their championship of separate schools and the use of the French language, are the features of their programme which raise large issues.

Imperial Conferences

During the summer of 1911 Sir Wilfrid Laurier was attending the Imperial Conference held on the occasion of the coronation of King George V. This conference was one of a series of gatherings of representatives of the United Kingdom and the colonies.

The first of these had been held in 1887, on the occasion of the jubilee of Queen Victoria. At this meeting the question of naval defence was discussed. The Australian colonies wished for a larger squadron and more extensive harbour works in their waters than the British Admiralty considered it could afford. Accordingly, it was arranged that an auxiliary squadron should be stationed in Australian waters, and that the Australian colonies should contribute £126,000 a year towards its cost.

Canada at this time could not agree to make any contribution. Her representatives quoted the agreement made during the negotiations preceding Confederation that the British government should provide naval defence for Canada, and that Canada should spend not less than £200,000 on her own land defence. It appeared that this was as far as Canada was prepared to go at this conference.

At the same meeting J. H. Hofmeyr, of South Africa, made the remarkable suggestion that the various parts of the Empire should levy a special tax of two per cent on foreign imports, and that the revenue should be devoted to the general defence of the Empire. No resolution was passed on this or any other topic.

The second conference, held at Ottawa in 1894, considered commercial relations and means of communication within the Empire. It passed resolutions favouring the project of laying a Pacific cable, establishing a monthly steamship service

between Vancouver and Sydney, and customs arrangements for promoting trade between Great Britain and her colonies.

The conference of 1897 was more formal than its predecessors. It was held in London, and was presided over by Joseph Chamberlain, the colonial secretary and an advanced imperialist. The Canadian representative, Sir Wilfrid Laurier, was the head of a new government which had adopted a preferential tariff in favour of Great Britain. It was the year of the Diamond Jubilee, the sixtieth year of the queen's reign, and the air was filled with imperial enthusiasm. The membership of the conference was for the first time confined to prime ministers, who, as they could command a majority in their parliaments, felt a strong sense of responsibility for any action taken in the conference. Chamberlain was eager for an advance along imperial lines. He proposed that the informal conference should give place to a great council of the Empire. He raised the question of defence. But the colonial representatives saw no necessity for an imperial council, or for any change in the political construction of the Empire, and they made no progress in regard to defence. They favoured the granting of trade preferences by the colonies to the United Kingdom, and asked for the denunciation of the German and Belgian treaties which stood in the way.

At the next conference, in 1902, Chamberlain again pressed for the creation of a council of the Empire, and also for the assumption by the colonies of a greater share of the burden of defence. The conference decided that its meetings should be held at intervals not exceeding four years—a slight gain in formality and regularity. The Australasian and South African colonies agreed to contribute towards the general maintenance of the navy, while Canada preferred a local naval force in Canadian waters. At the same time the Canadian ministers declared that they fully appreciated the obligation to make increased expenditures for defence, corresponding with the growth of the country, and to relieve the taxpayer in the United Kingdom. They expressed their willingness to co-operate with the imperial authorities, and follow the advice of imperial officers, so far as was consistent with local self-government. The subject of inter-imperial trade was discussed. The conference

decided that free trade within the Empire was not practicable, but that the colonies should do their best to give preference to the products of the United Kingdom. The imperial government was also urged to give preferential treatment to colonial products.

At the conference of 1907 the organization and construction of the conference was very thoroughly discussed. There was always a party in the conference that was moving consciously or unconsciously towards the creation of a new imperial government and imperial parliament. Its views had been frankly expressed by Joseph Chamberlain in 1902, when he suggested that the council which he proposed to substitute for the conference should have executive functions and perhaps legislative powers. Although the proposal was rejected in 1902 it was not abandoned. In April 1905 the Right Hon. Alfred Lyttelton, representing the imperial government, sent a dispatch to the colonial governments suggesting that the name Imperial Council be substituted for Colonial Conference, and that there should be a permanent commission, to which the Imperial Council might refer questions for examination and report. This commission would have an office in London and an adequate secretarial staff, the cost of which His Majesty's government would defray.

The governments of Australia, Natal and the Cape returned favourable answers. Canada's reply was unfavourable. The term 'council,' said the Canadian government, indicated a more formal assembly than 'conference,' and in conjunction with the word 'imperial' suggested 'a permanent institution which, endowed with a continuous life, might eventually come to be regarded as an encroachment upon the full measure of autonomous legislation and administrative power now enjoyed by all the self-governing colonies.' Canada thought also that the proposed commission might conceivably interfere with the working of responsible government. Lyttelton then said that it would be desirable to postpone the discussion until the next conference. Meanwhile a change of government occurred in England.

In the conference of 1907 resolutions favouring an imperial

council and a secretariat were proposed by the Hon. Alfred Deakin, prime minister of Australia. In the discussion which ensued Sir Wilfrid Laurier pressed for a clear definition of the functions of the secretariat. He pointed out that in the intervals between the conferences the secretariat could not act upon the suggestions of the colonial premiers, because these would be absent in their own colonies. There would thus be a tendency for the secretariat to become an independent body, and to this he, like Lord Elgin, then secretary of state for the Colonies, who presided, was opposed. The question was settled by placing the secretariat under the colonial secretary. The name of 'conference' was retained, and its work would be to consider questions of common interest. Meetings were to be held every four years; subsidiary conferences might be called for emergencies. The prime minister of the United Kingdom, the secretary of state for the Colonies, and the prime ministers of the self-governing dominions were designated as the *ex-officio* members of the conference; the prime minister of the United Kingdom, or in his absence the secretary of state for the Colonies, should preside. Other members besides prime ministers might take part in the discussion, but each government would have only one vote. The provision for the secretariat was in these words:

> That it is desirable to establish a system by which the several Governments represented shall be kept informed during the periods between the conferences in regard to matters which have been or may be subjects for discussion, by means of a permanent secretarial staff, charged, under the direction of the Secretary of State for the Colonies, with the duty of obtaining information for the use of the Conference, of attending to its resolutions, and of conducting correspondence on matters relating to its affairs.

These resolutions of 1907 may be regarded as the written constitution of the conference, if it may be said to possess a constitution.

A liberal government, pledged to the maintenance of free trade, was now in power in Great Britain, and this influenced the discussion of trade questions. The Right Hon. Herbert H.

Asquith said that the government could not consider any arrangement which involved the abandonment of free trade. He declared that free trade in England was not a dogma or a shibboleth. It was based upon practical considerations. The commercial predominance of Great Britain was due to three causes: (1) to the industrial activity of the people; (2) to the profits derived from keeping open to the whole world a great market, making London and England a centre for the intermediate business of the commercial world; (3) to the earnings of shipping, which does the carrying trade for more than half the world. Untaxed food and raw material were essential. 'Curtail the source of supply, raise the cost of supply, and you strike a deadly blow at the very foundations of our industrial system.' As a result of the discussion the conference reaffirmed the resolutions of 1902, recommending the granting of preferences within the British Empire, the British government dissenting in so far as it was implied that the fiscal system of the United Kingdom should be altered.

In the discussions on naval defence the Hon. Alfred Deakin for Australia and the Hon. Louis P. Brodeur for Canada spoke strongly in favour of local control. Dr Smartt of South Africa moved a resolution declaring it to be the duty of the colonies to contribute to the British navy, either by a grant of money or by local naval defence. Sir Wilfrid Laurier said that he would be obliged to oppose the resolution, and it was abandoned.

As to land defence the Right Hon. Richard Haldane, British secretary for War, emphasized the necessity of organizing home defence forces throughout the Empire on common lines, and for this purpose recommended the creation of an imperial general staff selected from the forces of the Empire as a whole, to study military science, collect military information and send it to the various governments, prepare schemes of common defence, and without interfering with local control, give advice to such governments as request it. To this the conference assented cordially, without committing any of the governments represented.

At the conference of 1911 Sir Joseph Ward, prime minister of New Zealand, moved a resolution favouring the constitution

of 'an Imperial Council of State, with representatives from all the constituent parts of the Empire, in theory and in fact advisory to the Imperial Government, on all questions affecting the interests of His Majesty's Dominions overseas.' His speech went farther than his resolution. His scheme was virtually one of imperial federation, and he said that the body he wished to see formed might be called an Imperial Parliament of Defence. This council or parliament would provide for a uniform system of sea defence, and fix the contribution to be made by each part of the Empire. He proposed that the United Kingdom and the oversea dominions should elect to the new parliament one representative for each two hundred thousand of their people. He hoped that there would be developed in this way, eventually, 'a true Imperial Parliament' with local autonomy for the national divisions of the United Kingdom as well as for the dominions. This far-reaching proposal took the conference by surprise, and nearly every expression of opinion was adverse to the scheme. H. H. Asquith, the president, said that it would impair the authority of the government of the United Kingdom as to foreign policies, treaties, peace and war. The resolution was therefore withdrawn.

Sir Joseph Ward next made a proposal to reconstitute the Colonial Office. He wanted the department of the Dominions separated from that of the Crown Colonies, and each department placed under a permanent under-secretary. He would have had the Dominion department incorporated with the staff of the secretariat already established in connection with the conference. He proposed also that the high commissioners of the dominions should attend meetings of the Committee of Defence, consult with the foreign minister, and become the sole channel of communication between the imperial and dominion governments. In referring to these proposals Lewis Harcourt, secretary of state for the Colonies, offered to set up a Standing Committee of the Imperial Conference, which would contain the secretary of state, the under-secretaries and the high commissioners. Sir Wilfrid Laurier looked doubtfully at the proposition, expressing himself as satisfied with the existing means of communication between the home

government and the dominion governments. The discussion was postponed, in the hope that some agreement could be made, but in the end no resolution was passed.

The Hon. Andrew Fisher, prime minister of Australia, introduced the subject of the Declaration of London, an international agreement regulating naval warfare. His resolution expressed regret that the dominions had not been consulted, and also disapproval of article 24 of the Declaration defining what foodstuffs were contraband of war, and of articles 48 to 54 permitting the destruction of neutral vessels.

This resolution led to discussion on two lines—first, as to the merits of the Declaration, and, secondly, as to the question whether the colonies should be consulted in the negotiation of treaties by the British government. As to the first Sir Edward Grey, the British foreign minister, contended that both as to foodstuffs and the sinking of neutral vessels there was a clear gain for neutral powers. Sir Wilfrid Laurier said as to foodstuffs : ' Up to the present time there has been no law upon this point, except what was the will of a nation who was the belligerent power. But now you have certain rules. These rules seem to me to be extremely humane and in the best interests of humanity. The rule as it is laid down is that foodstuffs are not to be contraband of war unless for the purpose of feeding the forces actually engaged in the war.' He declared also that there was an improvement in the procedure for proving whether certain food is contraband of war ; that the new rules were more favourable for neutrals. He avowed his belief that ' the Declaration of London is humane in every respect.' He flatly opposed the proposition that the colonies ought to have been consulted before the Declaration of London was agreed to. He said :

> In the proposition which was moved by our colleagues from Australia, especially as commented upon by Mr Fisher, certain principles were laid down which seemed to me to be very far reaching. If I understand him correctly, the proposition he laid down was that the Dominions should be consulted upon all treaties to be negotiated by His Majesty. There are two sorts of treaties between nations. First of all there are com-

mercial treaties; and secondly, there are treaties of amity, which are calculated to prevent causes of war, or to settle afterwards the effects of war. With regard to commercial treaties, His Majesty's government has already adopted the practice of never including any of the Dominions beyond the seas, except with their consent. That implies consultation prior or afterwards. Liberty is left to us to be included or not included in such a treaty as that, and I think that is very satisfactory.

In Canada, I may say, we have gone further and claimed the liberty of negotiating our own treaties of commerce, and, so far, since the time we applied for this privilege, which was given to us, of course the negotiations have been carried on with the concurrence of the Foreign Office in conjunction with the Ambassador, but at all events our liberty was not restricted at all in that respect.

Coming now to the other class of treaties, which I characterized as treaties of amity, it would seem to me that it would be fettering, in many instances, the home government—the imperial authorities—very seriously, if any of the outside Dominions were to be consulted as to what they should do on a particular question. In many cases, the nature of the treaty would be such that it would only interest one of the Dominions. If it interested them all, the imperial authorities would find themselves seriously embarrassed if they were to receive the advice of Australia in one way, the advice of New Zealand in another way, and the advice of Canada, perhaps in a third way. Negotiations have to be carried on by certain diplomatic methods, and it is, I think, not always safe for the party negotiating to at once put all his cards on the table and let his opponent know exactly what he is after.

I noticed particularly what was said by Mr Fisher a moment ago, that the British Empire is a family of nations, which is perfectly true; but it must be recognized that in that family of nations by far the greater burden has to be carried on the shoulders of the government of the United Kingdom. The diplomatic part of the government of the Empire has of necessity to be carried on by the government of the United Kingdom, and that being so, I think it would be too much to say that in all circumstances the Dominions beyond the seas are to be consulted as far as the diplomatic negotiations

are concerned. That is what I understand Mr Fisher to desire.

After some conversation with the prime minister of Australia, Sir Wilfrid Laurier resumed :

> Yes, but now let us apply this general doctrine to the Declaration of London. This is a thing which, in my humble judgment, ought to be left altogether to the responsibility of the government of the United Kingdom, for this reason : This is a treaty which lays down certain rules of war as to in what manner war is to be carried on by the Great Powers of Europe. In my humble judgment, if you undertake to be consulted and to lay down a wish that your advice should be pursued as to the manner in which the war is to be carried on, it implies of necessity, that you should take part in that war. How are you to give advice and insist upon the manner in which war is to be carried on, unless you are prepared to take the responsibility of going into the war ?
>
> Mr Fisher.—Do not we do that in a manner by coming here ?
>
> Sir Wilfrid Laurier.—No, we come here to discuss certain questions ; but there are questions which seem to me to be eminently in the domain of the United Kingdom. We may give advice if our advice is sought ; but if your advice is sought, or if you tender it, I do not think the United Kingdom can undertake to carry out this advice unless you are prepared to back that advice with all your strength, and take part in the war and insist upon having the rules carried out according to the manner in which you think the war should be carried out. We have taken the position in Canada that we do not think we are bound to take part in every war, and that our fleet may not be called upon in all cases, and, therefore, for my part, I think it is better under such circumstances to leave the negotiations of these regulations as to the way in which the war is to be carried on, to the chief partner of the family, the one who has to bear the burden in part on some occasions, and the whole burden on perhaps other occasions.

The result of the discussion was, first, that the Treaty of London was ratified by the conference, upon the motion of the premier of New Zealand. All the delegates agreed except

the prime minister of Australia, who abstained from voting. Secondly, on the motion of Fisher, the following resolution was passed unanimously :

> (*a*) That the Dominions shall be afforded an opportunity of consultation when framing the instructions to be given to British delegates at future meetings of the Hague Conference, and that conventions affecting the Dominions, provisionally assented to at that conference, shall be circulated among the Dominion Governments for their consideration before any such convention is signed : (*b*) That a similar procedure, where time and opportunity and the subject matter permit, shall as far as possible be used when preparing instructions for the negotiations of other international agreements affecting the Dominions.

Passing to another topic, Sir Wilfrid Laurier moved a resolution asking that 'His Majesty's government be requested to open negotiations with the several foreign governments having treaties which apply to the Oversea Dominions, with a view to securing liberty to any of those Dominions which may so desire to withdraw from the operation of the treaty without impairing the treaty in respect of the rest of the Empire.' The object of the resolution was to obtain for Canada freedom of negotiation. For instance, in negotiating a reciprocity treaty with the United States, Canada found the reductions made in favour of the United States might have to be given also to twelve countries having most-favoured-nation treaties with Great Britain—Argentina, Austria-Hungary, Bolivia, Columbia, Denmark, Norway, Sweden, Switzerland, etc. The principle is now accepted that a new commercial treaty shall not apply to any self-governing colony unless the colony desires. The resolution was intended to bring about the release of the colonies from treaties made years ago, some of them before the colonies obtained powers of self-government, one or two in the time of the Stuarts. Sir Edward Grey admitted the justice of the proposal and declared that the government was willing to enter into negotiations to relieve the colonies from the operation of commercial treaties to which they had not consented. He

intimated, however, that there would be difficulties, and that it might occupy some time—perhaps a year or two. The resolution was adopted by a unanimous vote.

The subject of naturalization was brought before the conference. The rules of naturalization vary in different parts of the Empire. In the United Kingdom there must be five years' residence ; in Canada three years ; in Australia two years ; and in New Zealand there is no time limit—the alien is naturalized at once if his education and character are satisfactory. Naturalization in Canada is not recognized elsewhere in the Empire ; so that the hosts of Americans who are naturalized in Canada are British subjects in Canada but not in the United Kingdom. The same defect attaches to naturalization in the other oversea dominions. Resolutions looking to uniform or general naturalization were placed on the order paper by Australia, New Zealand and South Africa. Sir Wilfrid Laurier said he saw no objection to each dominion making its own naturalization laws, but he would have the naturalization of one dominion accepted everywhere. He said, for instance, that he would be willing to accept in Canada every man naturalized in New Zealand, where no residence was required. The Right Hon. Winston S. Churchill, Home secretary, proposed the plan which was accepted by the conference. The mother country will continue to require five years' residence, but this five years may be anywhere in the Empire. For instance, in Canada an alien acquires citizenship in three years. After residing there two years more he could obtain from the Canadian authorities a certificate of imperial naturalization, good in any part of the Empire.

The discussion on emigration was remarkable for a very frank statement from the Right Hon. John Burns, president of the Local Government Board. He said that in 1908 the volume of emigration from Great Britain to all countries was 234,000, and of these 160,000 went to the British Empire—68 per cent as compared with 54 per cent in 1906 ; while in 1911 he estimated that 80 per cent would go to British countries. The total expected emigration of 1911, 300,000, would be nearly 60 per cent of the natural

increase of the United Kingdom ; the mother country could not safely go beyond this figure. 'You are entitled to take our surplus, but you must not diminish the seed plot.' He was opposed to state-aided emigration. The conference passed a resolution declaring that it was desirable to continue to encourage emigration to British rather than foreign countries, and that the imperial government should co-operate with the colonies.

The imperial government sought to obtain the support of the conference for the co-operation of the dominions in working out the Labour Exchange Act, a measure for bringing together employers and workmen desiring employment. Sir Wilfrid Laurier opposed the proposition upon the ground, set forth in a memorandum by the Canadian minister of Labour, that any measure designed to promote the emigration of workmen, other than agricultural, would cause friction between employers and workmen in Canada. After hearing the discussion the Right Hon. Sydney Buxton, president of the Board of Trade, withdrew the resolution.

At the instance of Sir Wilfrid Laurier it was resolved that a royal commission should be appointed to investigate the resources, industry and commerce of the Empire, and to consider by what methods, consistent with the fiscal policy of each part, inter-imperial trade could be increased.

Growth of Population

The census of 1911 showed that Canada had a population of over 7,200,000. About a million inhabitants had been added to the West, and the two new provinces of Alberta and Saskatchewan had increased their population fivefold. In the eastern provinces there had been an addition of 700,000 to the population, chiefly in Ontario and Quebec. By far the most rapid increase had been in Quebec, while Ontario and the Maritime Provinces, not having kept pace with Quebec, were marked for a decrease in their representation in the House of Commons.

To show the significance of these figures it will be necessary to refer to the history and development of the population of

the country. In federated Canada political development and railway communication went in advance of population. There was comparatively little of the hardship and danger which in the United States were features of pioneer life, or of the lawlessness which characterized such mining camps as those of California. There was not in Canadian as there was in American settlement, a period of long, toilsome and dangerous migration westward. The ox team, the stage coach, the danger from Indians and highwaymen, played little part in Canadian history. Most of the new arrivals in Canada, after Confederation, found their way to their new homes by railway.

The framework of political organization was almost completed between 1867 and 1874, when the older provinces were federated, when Prince Edward Island and British Columbia were joined to the Dominion, and when the vast territory between Ontario and the Rocky Mountains was incorporated in the system. In this period also the Mounted Police were organized, with the object of maintaining peace and order and preventing conflicts between settlers and Indians. These duties they performed admirably, with the result that, except during the outbreak of 1885, life and property were as safe on the prairies as in the city of Toronto. There was little population in the Canadian West before the building of the Canadian Pacific Railway, and settlement proceeded slowly even after that railway was constructed. When immigrants began to arrive in large numbers two other transcontinental railways, the Canadian Northern and the Grand Trunk Pacific, were vigorously pushed forward. In 1882 the increase in railway mileage was 1366 miles; in each of the years 1886, 1905, 1907 and 1909 it exceeded a thousand miles; and from Confederation to 1910 the railway mileage increased from 2278 to 24,731.

With all these advantages population for many years grew slowly. The first census, taken in 1871, showed a population of 3,485,761, of which 1,620,851 was in Ontario, 1,191,516 in Quebec, 673,349 in the Maritime Provinces, and 12,288 in Manitoba. The population was then, in the main, a fringe along the Atlantic coast, the St Lawrence and the Great Lakes.

The next census, taken in 1881, gave a population of 4,324,810, of which 1,923,228 was in Ontario, 1,359,027 in Quebec, 870,696 in the Maritime Provinces, 65,954 in Manitoba, 49,459 in British Columbia, and 56,446 in the North-West Territories. In this decade the settlement of Manitoba and the North-West Territories had made some progress, British Columbia had been added to the Dominion, and a considerable portion of the Canadian Pacific Railway had been completed. The population west of Ontario now amounted to 171,859.

In the next decade the Canadian Pacific Railway was built at a very rapid rate by the syndicate or company to whom the work was transferred in 1880-81. But although the railway was completed in the first half of the decade, the result was somewhat disappointing. The increase in the population of the West was less than in the previous decade. The population of Manitoba was 152,506, of British Columbia 98,173, and of the Territories 66,799—a total of 317,478 west of Ontario. The total for all Canada was 4,833,239.

The census of 1901 showed a total population of 5,371,315, of which the West had 592,808. In the latter part of this decade the immigration, which, in spite of the building of the Canadian Pacific Railway, had been discouragingly slow, began to come in an abundant stream, and the increase during the ensuing decade was still more rapid. In 1897 the total reported immigration was 21,716. Two years later this number was doubled. In 1901-2 it had risen to 67,379; in the following year it was 128,364. For the first decade of the new century the reported immigration was 1,750,000.

The rapid flow of immigration which appeared about the beginning of the twentieth century has been ascribed to the approaching end of the land available for settlement in the United States. This statement must be taken with a reservation. It does not mean that the agricultural resources of the United States were nearly exhausted. Farming methods in that country are careless and prodigal. The American farmer had been accustomed to move westward and northward as reports of new fertile lands reached his ears, much as miners flock to any place in which discoveries of gold

and silver are reported. Towards the close of the nineteenth century it was realized that there were no more of these vast undeveloped regions in the United States ; consequently the eyes of the American farmers were turned towards Canada. At the same time the immigration from Great Britain and the continent of Europe was very largely increased. In addition to the cause already mentioned the increase was due to the vigorous immigration policy adopted in 1897. The miscellaneous sale of land to non-settlers was stopped, the homestead laws were liberalized, and Canada was aggressively advertised in Great Britain, Europe and the United States.

The census of 1911 was the first that indicated that Canada in regard to population had at last ' come to its own.' The increase in the decade was about equal to that of the previous thirty years. It did not fulfil some of the sanguine expectations that had been formed, for the increase was just about equal to the reported immigration, and when allowance was made for the natural increase, it was inferred that there must have been a considerable exodus to the United States.

Problems have arisen as to the quality of the immigration and the power of the young country to assimilate newcomers of various races. It has been found necessary to place restrictions on oriental immigration, lest the white people of British Columbia should be swamped by new arrivals from such teeming sources of population as China, Japan and India. The immigration returns show some fifty national and racial divisions, and as one reads the long list the problem of assimilation looks formidable. But while its seriousness is not to be denied, there is a safeguard in the variety of races, no one element of European immigration being large enough to exercise a dominating influence. The character of western civilization will be determined by the newcomers from old Canada and from Great Britain and by those from the United States, most of whom trace their descent ultimately to the British Islands, and nearly all of whom are familiar with the working of free institutions.

Canadian Expansion

In examining this process of expansion one is struck by its peaceful character. The two insurrections in the West in 1870 and 1885 are so slight as only to emphasize the general freedom from violence and from the necessity for military operations. The history of Canada in this respect contrasts strongly not only with that of Europe but with that of the United States. The latter country obtained its independence and preserved its unity by war; and the settlement of its own territories was marked by frequent and bloody conflicts with Indians. In Canada there has been no serious trouble with Indians except in the brief rising of 1885.

The struggles of Canada have been mainly those of the pioneers and the builders of railways, together with those engaged in by constitutional lawyers, politicians and diplomats. The student of Canadian history encounters a long list of treaties or attempts to make treaties, disputes over international and interprovincial boundaries, disputes as to the power and jurisdiction of the federal and provincial authorities. In their strictly legal and constitutional aspects these are considered in another part of this work.[1] But in a general history they must receive some attention, or the course of political development would not be understood. They entered into party politics; they aroused deep feelings; they affected the fortunes of governments and parties. Hence the student of Canadian history is forced to be a student of the constitution.

In the political development of Canada three main factors have constantly to be kept in view: (1) internal relations, that is relations of the provinces and of the various racial and religious elements of Canada; (2) imperial relations; (3) relations with the United States, as Canada's nearest neighbour.

Many questions arose as to the respective powers of the central and the provincial authorities, and the general result of these conflicts was to maintain the federal principle and to

[1] See 'Boundary Disputes and Treaties' and 'The Federal Constitution' in this section.

preserve the autonomy of the provinces. Quebec is sharply distinguished from the other provinces by the fact that it is mainly French and Catholic, and by the large part that the Catholic Church plays in its social and political life. It is also less imbued than the other eastern provinces with imperial ideas, and on several occasions this difference of sentiment has threatened to produce ill-will and to impair national unity.

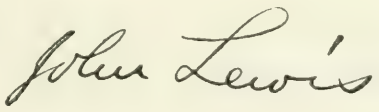
In regard to imperial relations there has been a steady growth in self-reliance and a progress towards equality and nationhood within the Empire. So natural has been this process that in speaking of it one seems to be stating truths that are self-evident and relating a course of events that is inevitable. Self-government in purely domestic affairs had been obtained before Confederation. Great Britain still made Canada's treaties and assumed the burden of her defence. As Canada grew in population and wealth the relation was changed in both respects. In the negotiations leading to the Washington treaty the Dominion was represented by Sir John Macdonald as one of the five British representatives. In the negotiations for reciprocity in 1874 Canada was represented by the Hon. George Brown as one of two British representatives. As time went on negotiations were placed more and more in the hands of Canadians, and the reciprocity agreement of 1911 was negotiated by two representatives of Canada, the Hon. W. S. Fielding and the Hon. Wm. Paterson.

As Canada has acquired larger powers she has assumed greater responsibilities. Soon after Confederation the regular forces of Great Britain were withdrawn from Canada, which had thenceforth to provide for its own defence by land. In 1905 the British squadrons on the Atlantic and Pacific coasts of Canada were withdrawn, and in 1909 the Canadian parliament authorized the establishment of a Canadian navy.

The proximity of the United States, with all it involves, exercises a constant influence upon Canada. The trade of Canada with its neighbour is one-half the total Canadian trade. There is a large intermingling of the population. In earlier years, when Canada presented few opportunities to young men, there was a large exodus of Canadians to the

United States. In recent years this exodus has been greatly diminished, and at the same time there has been a migration of American farmers into the Canadian West. The periodical literature of the United States circulates widely in Canada. There is an interchange of thought through the drama, through sports and pastimes, and through movements for moral and social reform. New ideas and methods in business, industry, and housekeeping are rapidly communicated from one country to the other.

Political students have endeavoured to measure these forces—the movement towards autonomy, British influence and American influence—and to predict which in the end will predominate. Occasionally it has been said that Canada is at the 'parting of the ways,' and must soon make her choice for separate nationality, imperial federation, or political union with the United States. In recent years it has been perceived with increasing clearness that the relation between the several parts of the British Empire is really an international relation of a new kind, opening up possibilities larger than those found in the older systems. Canada enjoys under this form of union virtually all the advantage of independence and of a distinct national life, together with the opportunity of sharing in the fuller life and larger responsibility of the Empire as a whole.



THE FEDERAL CONSTITUTION

THE FEDERAL CONSTITUTION

I

CONSTITUENT PARTS AND FUNDAMENTAL ARRANGEMENTS

THE object of this article is to set forth the constituent parts of the Dominion constitution, and to describe in general language the division of legislative power within Canada between the Dominion parliament and the provincial legislatures, not only as explicitly enacted by the British North America Act, but also as interpreted and explained by the numerous decisions of the Judicial Committee and of the Canadian courts.

The British North America Act, 1867, expressly declares that the executive government and authority of and over Canada shall continue and be vested in the sovereign of the United Kingdom of Great Britain and Ireland, as also the command-in-chief of the land and naval militia, and of all naval and military forces of and in Canada. For purposes of the federal government His Majesty is, of course, represented by the governor-general, just as for purposes of the provincial governments he is represented in each province by a lieutenant-governor. For, although it was for a time questioned in certain quarters, it has been long since established by the irrefragable authority of the Privy Council that the lieutenant-governors of provinces represent the sovereign for the purposes of provincial government to the same extent as the governor-general does for purposes of Dominion government.[1] To aid

[1] As to the mode of appointment of the governor-general, his powers and functions, and his part in the actual working of the machinery of government, the cabinet, and the various departments of the Dominion government, and their heads, duties, and jurisdictions, see 'The Federal Government' in this section.

and advise the governor-general in the government of Canada there is a council, styled the King's Privy Council of Canada, the members of which are chosen and summoned by the governor-general and removable by him, and a committee of which comprises the ministry of the day.[1]

The Dominion parliament consists of the king, the upper house, styled the Senate, and the House of Commons. It is bound, under the provisions of the British North America Act, to hold a session once at least in every year, so that twelve months shall not intervene between the last sitting of the parliament in one session and its first sitting in the next session.

The Senate consists of 89 members, summoned to the Senate by the governor-general by instrument under the great seal of Canada, and holding their places in the Senate for life. Originally the federal principle was represented in the Senate, the British North America Act providing that in relation to its constitution Canada should be deemed to consist of three divisions, Ontario, Quebec, and the Maritime Provinces, and that Ontario should be represented by 24 senators, Quebec by 24, and the Maritime Provinces by 24, of which Nova Scotia should be represented by 12 and New Brunswick by 12. This federal principle, however, has not been maintained in the allotment of new senators to the western provinces, there being 3 from British Columbia, 4 from Prince Edward Island, 4 from Manitoba, 4 from Alberta, and 4 from Saskatchewan, while the number from Nova Scotia and New Brunswick respectively has been reduced to 10 each. The North-West Territories, as at present existing, are not as yet represented in the Senate. No senator is capable of being elected, or of sitting or voting as a member of the House of Commons of Canada.[2]

It is provided by the British North America Act that the

[1] As to the Privy Council of Canada, the appointment of its members, their tenure of office and their functions, see 'The Federal Government' in this section. And for the history of the establishment of responsible parliamentary government in Canada, and its continuance at Confederation, see section III, 'Constitutional Development, 1840-1867.'

[2] See further as to the composition of the Senate and its powers, the qualifications for the office of senator, the speaker of the Senate, and its other officers, 'The Federal Government' in this section.

representation of the various provinces in the Dominion House of Commons shall be readjusted after every decennial census by such authority, in such manner, and from such time as the parliament of Canada from time to time provides, subject and according to the following rules :

> (1) Quebec shall have the fixed number of 65 members.
> (2) There shall be assigned to each of the other provinces such a number of members as will bear the same proportion to the number of its population (ascertained at each decennial census) as the number 65 bears to the number of the population of Quebec (so ascertained).

The presence of at least twenty members of the House of Commons is necessary to constitute a meeting of the house for the exercise of its powers, and for that purpose the speaker is reckoned as a member. The house continues for five years, from the day of the return of the writs for choosing the house (subject to earlier dissolution by the governor-general) and no longer.[1]

When a bill has passed the houses of parliament and is presented to the governor-general for the king's assent, he declares either that he assents thereto in the king's name, or that he withholds the king's assent, or that he reserves the bill for the signification of the king's pleasure. When he assents to a bill in the king's name, he is required to send at once a copy of the act to one of His Majesty's principal secretaries of state, and the king in council may, if he thinks fit,

[1] See further as to the House of Commons, its procedure and officers, including the speaker and his functions, 'The Federal Government' in this section. The four provinces originally confederated were, of course, Quebec, Ontario, New Brunswick and Nova Scotia. In 1870 the Province of Manitoba was carved out of the North-West Territories. British Columbia was admitted into Confederation on May 16, 1871, and Prince Edward Island in 1873. The Provinces of Alberta and Saskatchewan were constituted in 1905. The orders-in-council and acts of parliament adding these new provinces to the Confederation, all provide that the provisions of the British North America Act, 1867, shall, with some minor variations in each case, not affecting the main features of the constitution, be applicable to each of the said provinces 'in the same way and to the like extent as they apply to the several provinces of Canada, and as if each of the said provinces had been one of the provinces originally united by the said act.' An imperial act of 1886 gave the parliament of Canada power to provide representation in the Senate and House of Commons for any territories which for the time being form part of the Dominion of Canada, but are not included in any province thereof.

disallow the act at any time within two years after the receipt of it by the secretary of state, and such disallowance, being signified by the governor-general in the prescribed manner, annuls the act from and after the day of such signification. On the other hand, a bill reserved by the governor-general for the signification of the king's pleasure has no force unless and until, within two years from the day on which it was presented to the governor-general for the king's assent, the governor-general signifies, in the prescribed manner, that it has received the assent of the king in council. By these means a certain power of control remains with the imperial government, which can be exercised if imperial interests or obligations sufficiently great to warrant its exercise, are involved.

As to the provinces under the federal scheme, there is in each a lieutenant-governor appointed by the governor-general in council, and holding office only during the pleasure of the governor-general in council, but not removable within five years from his appointment, except for cause assigned. The case of Letellier de St Just, however, who was dismissed in 1879 by the Dominion government from the lieutenant-governorship of Quebec for no other cause assigned than that 'his usefulness was gone,' shows that the discretion of the Dominion government in this matter of dismissal of lieutenant-governors is practically absolute, and that the governor-general cannot act without the advice of his responsible ministers.[1] Nevertheless, as has already been stated, a lieutenant-governor when appointed represents not the governor-general but the sovereign in all matters of provincial government.

For the rest, the constitutions of the various provinces which existed as separate colonies before Confederation, or before they joined the Union, continue as they were, subject to the provisions of the British North America Act, save as altered since by their own legislatures.[2] But, by reason of

[1] For the history of the Letellier case see p. 75.

[2] The New Brunswick legislative council was abolished in 1891 by an act to take effect in 1894. British Columbia abolished its legislative council immediately prior to entering the Union in 1871. Attempts have from time to time been made to do away with the Nova Scotian legislative council, but it still remains.

the division of the then Province of Canada into the Provinces of Ontario and Quebec, the Federation Act had to make special provision as to the constitution of the executives and legislatures therein respectively. There is in each of them an executive council composed of such persons as the lieutenant-governor from time to time thinks fit. In Ontario there is a legislature consisting of the lieutenant-governor and of one house, styled the legislative assembly of Ontario. In Quebec the legislature consists of the lieutenant-governor and two houses, styled the legislative council of Quebec and the legislative assembly of Quebec. The Provinces of Manitoba, Alberta and Saskatchewan, when constituted, were provided with constitutions similar to that of the Province of Ontario, excepting that Manitoba was given a legislative council as well as a legislative assembly, but the former was abolished by Manitoba statute in 1876. In all the provinces the legislative assembly continues for four years only from the day of the return of the writs for choosing the same, subject to being sooner dissolved by the lieutenant-governor; and the legislature of each province must hold one session at least in every year. In all the provinces, as in the Dominion, the system of responsible parliamentary government is in operation; and Dominion parliament and provincial legislatures alike follow the usage of the imperial parliament in respect to appropriation and tax bills and the recommendation of money votes. We may say generally, in words of the late Sir John Bourinot, that 'that great body of unwritten conventions, usages and understandings which has in the course of time grown up in the practical working of the English constitution, forms as important a part of the political system of Canada as the fundamental law itself which governs the Federation.' When the lieutenant-governor assents to a bill, which he does in the name of the governor-general, he is required at once to send a copy of the act to the governor-general; and the governor-general in council has power, within one year after receipt thereof, to disallow the act. We shall presently see on what principles this veto power of the Dominion government over provincial acts is actually exercised. A lieutenant-governor may also reserve a bill for the signification of the governor-

general's pleasure, and the same will have no force unless and until, within one year from the day it was presented to the lieutenant-governor for the governor-general's consent, the lieutenant-governor signifies, in the prescribed manner, that it has received the assent of the governor-general in council. But a lieutenant-governor only reserves bills in his capacity as an officer of the Dominion and under instructions from the governor-general.

It remains to refer to the provisions of the Federation Act as to courts and judicature. The governor-general appoints the judges of the Superior, District and County Courts in each province, except those of the Courts of Probate in Nova Scotia and New Brunswick; and their salaries, allowances and pensions, as also those of the judges of Admiralty Courts, are fixed and provided by the parliament of Canada. The Federation Act also provided that the Dominion parliament should have power to provide for the constitution, maintenance and organization of a general Court of Appeal for Canada, and 'for the establishment of any additional courts for the better administration of the laws of Canada.' By virtue of the first of these powers a Supreme and Exchequer Court of Canada was established in 1875, with right of final appeal to the Supreme Court from the judgments of courts of last resort in the provinces, 'saving any right which (His) Majesty may be graciously pleased to exercise by virtue of his royal prerogative.'[1] The judges of the Superior Courts in each province hold office during good behaviour, but are removable by the governor-general on address of the Senate and House of Commons.

Having thus briefly stated and explained the constituent parts and fundamental arrangements of the Dominion constitution, we shall next refer to certain general considerations to be borne in mind in regard to it. Then we shall endeavour to make clear the position of the crown in Canada, and its

[1] As to this court see p. 372. By Dominion act of 1887 all original Exchequer Court jurisdiction was taken away from the judges of the Supreme Court of Canada, and transferred to one single judge called the Judge of the Exchequer Court of Canada, duly appointed under the act, and the court has since then constituted a tribunal entirely distinct from that of the Supreme Court of Canada.

relation to the Dominion parliament and the provincial legislatures, and shortly discuss the Dominion veto power over Dominion acts. After that we shall try to set out, in a clear and simple manner, the distribution of legislative power in Canada between the Dominion parliament and the provincial legislatures, as the courts have taught us to understand the provisions of the British North America Act in that regard. And we shall close this article by some remarks on such of the specific powers assigned to one or the other as seem to invite particular mention.

II

STATUTORY FOUNDATION OF THE CONSTITUTION

ALTHOUGH the scheme of Confederation resulted from negotiations, in the nature of treaty arrangements, between the various provinces which consented to come into it, yet when once passed, the British North America Act which gave effect to that scheme formed a new point of departure, and all constitutional rights and powers within the Dominion must be able to justify themselves under its provisions. For example, the various provincial legislatures cannot claim any powers of legislation except those expressly conferred upon them by the British North America Act. The condition of things existing in the various provinces before Confederation, and the powers exercised by their legislatures, may perhaps be sometimes usefully referred to in order to explain the language of the act, but not to control or supplement its express provisions. So, again, no acquiescence of the crown by non-exercise of the veto power or otherwise can render valid any Canadian statute unconstitutional under the Federation Act. Nor has any colonial secretary *ex officio* a right by a dispatch, or otherwise, to add to, alter, or restrain any of the legislative powers conferred by that act.

Again, in criticizing the judgments of the Judicial Committee of the Privy Council upon constitutional questions

arising in Canada, we must always remember that it is an act of parliament which they have to interpret. And, although the committee will no doubt always give it a liberal construction as a broad constitutional statute conferring and distributing high and large powers of government, both as to the Dominion and as to its provinces, still it must treat its provisions by the same methods of construction and exposition which courts of law apply to other statutes, no matter how great the constitutional importance of questions which may be raised.

The Crown in Canada

With so much by way of preface we can now proceed to describe in a general way the position of the crown in Canada. In 1763 Canada and all its dependencies, with the sovereignty, property and possession, and all other rights which had at any time been held or acquired by the crown of France, were ceded to Great Britain. Upon that event the crown of England became possessed of all legislative and executive powers within the country so ceded to it, and, save so far as it has since parted with these powers by legislation, royal proclamation, or voluntary grant, it is still possessed of them. Any of such powers as are now exercisable in the Dominion by governor or government have been delegated to them by the imperial parliament, or by a statute of a Canadian parliament or legislature to which the crown has assented. But where this delegation has taken place, such executive and legislative powers can be exercised, as we shall see, to the extent delegated, as effectively as the crown could itself have exercised them immediately after the Cession in 1763.

The prerogative of the crown runs in Canada to the same extent as in England, and, save so far as it has been limited and controlled by statute, is as extensive in the colonial possessions of the crown as in Great Britain. It is a fundamental principle of what may be called the British imperial constitution, that the crown is one and indivisible throughout the Empire: and it is quite incorrect to distinguish between the rights and privileges of the crown as head of the government of the Dominion, and the rights and privileges of the crown as head

of the government of the United Kingdom. But the crown is a party to and bound by Dominion or provincial statutes, constitutional under the provisions of the British North America Act, and its prerogatives may be controlled by them when they are so expressed. For although, as we have seen, the Federation Act provides that 'the executive government and authority of and over Canada is hereby declared to continue and be vested in the King,' it is well settled that a grant of legislative power under that act carries with it a corresponding grant of executive power, even when that power is of a prerogative character. Thus, a legislative power to provide for the constitution, maintenance and organization of courts will carry with it power to appoint judges to preside over these courts.

Another principle of the British imperial constitution is that colonial governors are not viceroys. The extent to which they represent the king is limited by their commissions and instructions. Such powers of the crown as are not expressly conferred by the British North America Act or have not been dealt with by statute, local or imperial, exist, whether in the governor-general or in the provincial lieutenant-governors, only by delegation from the sovereign, and, until so controlled by statute, can be withdrawn or modified and regulated by the sovereign, acting under the advice of his imperial ministers, as to the governor-general directly, and as to lieutenant-governors indirectly through the governor-general. It is therefore impossible to accept the theory which has been sometimes advanced that governors-general and lieutenant-governors in Canada necessarily possess, *virtute officii*, without express statutory enactment or express delegation from the crown, the right to exercise all prerogatives incidental to executive authority in matters over which the Dominion parliament and the provincial legislatures respectively have jurisdiction. The point is, indeed, a somewhat subtle one, and not, perhaps, of much practical importance: but it is well to preserve constitutional theory intact and uncorrupted, for unexpected emergencies in imperial affairs may at one time or another arise when it may be expedient to have it to appeal to.

Dominion Veto of Provincial Acts

Before leaving the subject of the crown in Canada, it is proper to speak of the federal veto power, which is one of the points in which the constitution of the Dominion markedly differs from that of the United States. The veto power of the crown over colonial statutes is, of course, an institution coeval with the Empire, and a reserve power clearly necessary to its safe preservation. And when the Dominion of Canada was formed, as a sort of *imperium in imperio*, it was natural and consistent that such power in the case of provincial acts should be vested in the Dominion government rather than left with the imperial authorities. As we have already seen, the governor-general in council has a period of one year after the receipt by him of any provincial act within which he may, if he thinks fit, disallow such act; and such disallowance will annul the act from the day when the lieutenant-governor signifies it by speech or message to the provincial legislature, or by proclamation. But if an act is disallowed at all, it must be disallowed in its entirety. It cannot be disallowed in part, and suffered to go into operation in part. Neither can it be disallowed conditionally, or its operation suspended by the Dominion government, as, for example, by decreeing that it shall not be allowed to go into operation until confirmed by a legislature differently constituted. Again, it is not constitutional for the Dominion parliament to interfere with the exercise of the veto power by the governor-general in council, as, for example, by resolution urging the latter to exercise it. To sanction this would tend to nullify the exclusiveness of the provincial power of legislation in relation to provincial subjects.

All these points were settled early in the history of Confederation, but it has taken longer for the principles upon which the federal veto power can be constitutionally exercised to become clearly established. For a considerable period it was thought not only proper and permissible for the Dominion government to veto provincial acts upon the simple ground that they were *ultra vires* under the British North America

Act, but also upon the ground that they were contrary to sound principles of legislation, as, for example, by unjustly interfering with vested rights, or with proceedings pending in courts of law. But it has been justly objected, as, for example, by the British Columbia government in 1905, that for the Dominion government to veto a provincial act upon the ground merely that it is *ultra vires* of provincial powers under the British North America Act, is virtually to constitute the minister of Justice the highest judicial functionary for the determination of a purely legal question, and to deprive parties interested of the opportunity of obtaining the judgment of the Supreme Court or the Privy Council upon it; and it is improbable that the veto will again be exercised in such cases. As to vetoing provincial acts upon the ground of unjust interference with vested rights, or with the proceedings of courts of justice, the Dominion government has again and again in the last few years repudiated the constitutional propriety of such a step, although as late as 1893 the authoritative view was the other way. Perhaps the Ontario legislation in respect to the Hydro-Electric Power Commission of that province in 1909 may be said to mark the final abandonment of all idea that it was the function of the Dominion government to sit in judgment on the morality or wisdom of provincial legislation *intra vires* and constitutional, and the final acceptance of the view that the only proper appeal in such cases lies to the electorate. Nor, it is submitted, can there be any real doubt of the constitutional soundness of this view. However we may deplore legislation which we may consider unjust or arbitrary, or unwise and reckless, it is impossible to question the force of the words of the attorney-general of Ontario in a communication to the minister of Justice in 1909 in reference to the Ontario legislation just referred to, when he urged with success that

> for upwards of 200 years the lords and commons of Great Britain have legislated without fear of the royal veto, although its existence has been undoubted; and, therefore, in full accord with the spirit and genius of British institutions, the people of the province, being entitled to all rights of British subjects elsewhere, and,

> as free . . . to legislate within their jurisdiction as the lords and commons of Great Britain are free to legislate, cannot submit to any check upon the right of the legislature to legislate with respect to subjects within its well-defined jurisdiction, although a technical right to disallow may exist. Any other view would mean that there are different grades of British subjects in the Empire ; that the people of the several provinces of the Dominion have not, and are not entitled to, the full and free enjoyment of those civil rights and liberties which are enjoyed by British subjects in the mother country, a condition of things which would be intolerable.

And so Sir Allen Aylesworth, as minister of Justice, in his final appeal to the governor-general against disallowance, said :

> In the opinion of the undersigned, a suggestion of the abuse of power, even so as to amount to practical confiscation of property, or that the exercise of a power has been unwise or indiscreet, should appeal to Your Excellency's government with no more effect than it does to the ordinary tribunals, and the remedy in such case is, in the words of Lord Herschell, an appeal to those by whom the legislature is elected.

It may then be said, probably with safety, that the Dominion government will never again veto provincial acts merely as contrary to sound principles of legislation, or unjust or otherwise immoral. To evoke the veto power it will be necessary that the legislation objected to be also injurious to the general interests of the Dominion in some very direct and material respects, or contrary to imperial treaty, or imperial policy, or grave imperial interests.

But the Dominion government, quite apart from imperial treaties, always seems to have viewed provincial legislation discriminating against foreign immigrants and resident aliens as standing upon a peculiar footing, not perhaps so much because legislation in relation to aliens is a matter of Dominion jurisdiction exclusively, or because section 95 of the British North America Act gives the Dominion parliament concurrent jurisdiction with the provincial legislatures as to immigration into the provinces, with predominating authority in case of

conflict, as because such legislation does necessarily affect the interests of the Dominion as a whole, and the relations of the Empire with foreign states. At any rate British Columbia legislation of such a kind has been quite recently disallowed, as, for example, in 1899 and 1901.

A fortiori the governor-general in council may always be relied upon to veto provincial acts which militate against imperial treaties, the latter having been placed under the special care of the Dominion by section 132 of the British North America Act, which provides that 'the parliament and government of Canada shall have all powers necessary or proper for performing the obligations of Canada or of any province thereof as part of the British Empire towards foreign countries arising under treaties between the Empire and such foreign countries.'

III

LAW-MAKING BODIES

Imperial Legislation Affecting Canada

WE must now proceed to consider where power resides to make statutes of one kind or another binding upon the people of Canada. And in this connection it must be remembered that, although the Dominion is one of the self-governing colonies of the Empire, the power of the imperial parliament to make laws binding upon its people, with all other subjects of the crown, has been in no way abrogated by the British North America Act. In the early days of Confederation, indeed, the idea found expression, even in some judicial quarters, that when the Federation Act gave the Dominion parliament or the provincial legislatures 'exclusive authority' to make laws in relation to this or that subject, it meant exclusive of the imperial parliament. Such a construction of the act was repudiated by the Ontario Court of Appeal in 1876 in a judgment in which they held that the holder of a British copyright under the imperial Copyright Act of 1842 was entitled to restrain reprints of his book in Canada, although he had done nothing to comply with the

requirements of the Dominion Copyright Act, 1875, to the effect that all authors desirous of obtaining copyright in Canada must print, publish and register under that act. And although the new imperial Copyright Act, 1911, empowers a self-governing dominion to refuse to be governed by its provisions, as regards works by authors resident therein, or first published therein, this does not in the least affect the force of the above decision. And as a matter of fact all subsequent Canadian decisions have upheld the paramount power of the imperial parliament to legislate for Canada, as for the rest of the Empire, whenever it sees fit so to do.

But we shall go grievously astray in our view of British constitutional systems if we centre our attention on naked powers theoretically exercisable under them instead of on those conventions, as powerful as any statutes, which regulate, or it may be altogether prohibit, their exercise. It is these constitutional conventions, as they change from age to age, which mark the organic development of the national life. And although the imperial parliament retains in theory its power to legislate over the heads of all colonial legislatures, there is in fact only one subject in domestic, as distinguished from international or naval affairs, in respect to which it now exercises statutory control over all His Majesty's subjects in all parts of the Empire, and that is merchant shipping. The same is true of the imperial power of disallowance. At the Imperial Conference in 1911 Sir Wilfrid Laurier said :

> While the United Kingdom has asserted to itself the power to disallow any legislation which it is in the power of the self-governing dominions to pass, it has been very chary of exercising that power, except in matters of shipping, whereon it has always maintained the doctrine that it had the power to supervise the legislation passed by the self-governing dominions.

In the same way under the governing imperial Merchant Shipping Act, which is the act of 1894, any colonial legislation repealing any of the provisions of that act in relation to ships registered in that possession must be first approved by His Majesty in council ; nor can any British possession regulate by statute its own coasting trade, unless such regulations are

first approved by His Majesty in council, and they must, moreover, treat all British ships in exactly the same manner as their own.

Canadian Legislative Powers

We will now proceed to discuss the legislative powers of the Dominion parliament and the provincial legislatures. The phraseology of sections 91 and 92 of the British North America Act whereby legislative power is distributed between the Dominion parliament and the provincial legislatures, is so important, and the various subjects upon which they may respectively legislate are stated so concisely therein, that it is expedient to set them out *verbatim* :

> 91. It shall be lawful for the (king) by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces ; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say :
>
> 1. The Public Debt and Property.
> 2. The regulation of Trade and Commerce.
> 3. The raising of money by any mode or system of Taxation.
> 4. The borrowing of money on the Public Credit.
> 5. Postal Service.
> 6. The Census and Statistics.
> 7. Militia, Military and Naval Service, and Defence.
> 8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
> 9. Beacons, Buoys, Lighthouses and Sable Island.
> 10. Navigation and Shipping.
> 11. Quarantine and the establishment and maintenance of Marine Hospitals.
> 12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country, or between two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the constitution of the Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The establishment, maintenance, and management of Penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any matter coming within any of the classes of subjects enumerated in this Section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say :

1. The amendment from time to time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial purposes.
3. The borrowing of money on the sole credit of the Province.
4. The establishment and tenure of Provincial Offices,

and the appointment and payment of Provincial Officers.

5. The management and sale of the Public Lands belonging to the Province, and of the timber and wood thereon.
6. The establishment, maintenance, and management of Public and Reformatory Prisons in and for the Province.
7. The establishment, maintenance, and management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Provinces, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences, in order to the raising of a Revenue for Provincial, Local, or Municipal purposes.
10. Local Works and Undertakings, other than such as are of the following classes :
    a. Lines of Steam and other Ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province.
    b. Lines of Steam Ships between the Province and any British or Foreign Country.
    c. Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the constitution, maintenance, and organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including procedure in civil matters in those Courts.
15. The imposition of punishment by fine, penalty, or imprisonment for enforcing any Law of the Province made in relation to any matter coming

within any of the classes of subjects enumerated in this Section.

16. Generally all matters of a merely local or private nature in the Province.

These are the two principal sections of the Federation Act as it affects the distribution of legislative power in Canada between the Dominion parliament and the provincial legislatures. They are supplemented by three other sections which provide respectively for the power of each province, subject to certain restrictions, to make laws in relation to education, and for the future attainment, if the provinces so desire, of uniformity in their laws relative to property and civil rights, and for concurrent powers in the Dominion parliament and the provincial legislatures to make laws in relation to agriculture and immigration. But before treating of any of the specific powers of legislation thus given, there are certain introductory observations to be made, and certain general principles to be stated in relation to this whole subject.

Observations on the Federation Act

In distributing various subjects of possible legislation between the Dominion parliament and the provincial legislatures, the Federation Act makes use only of very general language; language so general that, clearly, the divisions are in several cases cross-divisions; for example, many subjects which must obviously affect property and civil rights in the different provinces are placed by the act under the exclusive jurisdiction of the Dominion; and yet 'Property and Civil Rights in the Province' are expressed to be for the provincial legislature exclusively; the act supplementing this broad, and in a sense intentionally vague, language by a few general principles; as, for example, that 'notwithstanding anything in this Act,' the classes of subjects enumerated in section 91 are for the Dominion parliament exclusively, and that any matter coming within them is not to be deemed to come within those matters of a local or private nature which are by section 92 assigned exclusively to the provinces. The Fathers of Confederation

thus refused to yield to that very obvious temptation which lies in the path of the framers of fundamental constitutions, to consecrate, if possible, for all time their own individual wisdom and judgment as to what legislatures should enact upon certain matters : a temptation which has certainly not been resisted to a similar extent by the framers of the constitutions of the various states of the Union, nor indeed of the constitution of the United States itself. By this reticence and self-repression there was secured for the Canadian constitution such a measure of flexibility and adaptability as permits of its organic growth and development, concurrently and harmoniously with that of the national life as a whole, taking form and colour and substance as time goes on. In this respect, as in others which we shall have occasion to observe, they were true, so far as was possible in a federal constitution, to the promise contained in the preamble of the act that Canada should have ' a Constitution similar in principle to that of the United Kingdom.'

Then again, in the very forefront of section 91, we note that the Dominion parliament has power ' to make laws for the peace, order, and good government of Canada ' in relation to all matters not exclusively assigned to the provinces. Now the exact scope and limitations of this Dominion power have by no means been as yet defined and determined. Whenever the Privy Council has had occasion to refer to them, however, it has emphasized their breadth and generality.

Could the Dominion parliament, under them, amend the constitution of the Dominion ? We have seen that the provincial legislatures have express power given to them to amend the constitution of the province, except as regards the office of lieutenant-governor. But what about the Dominion parliament ? It certainly cannot affect the provincial powers, for this Dominion residuary power is expressly made subject to them. But apart from them, could the federal parliament amend the constitution of the Dominion and repeal the clauses of the British North America Act ? It may seem a bold question. How, it may be asked, can the Dominion parliament amend or alter the provisions of the imperial act which has constituted it ? The answer must be—only if the

imperial act which constituted it has given it the power. So we come back to the construction of the words of section 91.

Then, again, the question suggests itself, Has the Dominion parliament, under these and its other powers, any power of directly affecting persons or things outside Canada but within the Empire? No doubt, as a great English judge has said, even the statutes of the imperial parliament 'have no power, and are of no force beyond the Dominions of His Majesty.' But this has no bearing upon the question as to what powers of legislation effective within the Empire the imperial parliament may have seen fit to give the legislatures of the self-governing dominions. The imperial parliament has, by the Commonwealth of Australia Constitution Act 1900, expressly given to the Australian federal parliament power to make laws 'for the peace, order, and good government of the Commonwealth with respect to fisheries in Australian waters beyond territorial limits,' for 'external affairs,' and for 'the relations of the Commonwealth with the islands of the Pacific.' So that it is very clear that no narrow construction of the principle of extra-territoriality, as it is termed, if it applies at all, is to be given to it in relation to the potential operation of colonial legislation within the Empire; and it would rather seem that the limitations in this respect must be entirely a matter of the construction of the imperial instrument, whether royal proclamation or statute, which conferred the colonial powers. What the limitations are to the powers of the Dominion parliament in this respect is entirely undetermined as yet.

Another question which suggests itself in this connection is whether in any event a Canadian court has jurisdiction to disregard or declare invalid a Dominion statute on the ground of extra-territoriality. Whether the courts of England, or of the other parts of the Empire, would recognize a judgment obtained under the provisions of such a statute against a person not domiciled within Canada, is quite a different matter. It may well be that no Canadian court could give effect to an objection raised to a Dominion statute on this ground.

This may, in truth, be regarded as part of the wider

question whether Dominion statutes, if otherwise valid, do not bind Canadian subjects of the crown everywhere, if expressed to apply to them. For the expression ' subject of a Colony ' has high English judicial authority, and may be applied to British subjects domiciled in the colony. The Supreme Court at all events has held that a provision of the Canadian Criminal Code which brings within the penalties of bigamy any one who, being married, marries in any part of the world any other person, provided that he or she is a British subject resident in Canada, and leaves Canada with intent to commit the offence, is *intra vires*. But the complete construction of Canada's constitution will only be reached when the national life and that of the Empire are completed. The founders of it have given not a dead letter, but a living and breathing constitution full of vitality and power of growth; and we have been peering into a future not yet realized.

Contrasts with the United States

Before we pass on there are two or three notable respects in which Canada's constitution contrasts with that of her neighbours in the matter of the distribution of legislative power. One is that in Canada all law-making powers, over the internal affairs of the Dominion, which are not assigned to the provinces exclusively, are conferred upon the Dominion parliament, whereas the constitution of the United States provides that ' the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.' Thus Canada's arrangement is in this respect the exact converse of that of the United States. Again, instead of creating an opening for endless dispute by leaving the powers of the provinces undefined, as those of the various states of the Union necessarily are under the provision of the American constitution just quoted, the British North America Act defines the broad character of the various subjects of possible legislation intended to be assigned to the provinces; in every case, however, it will be noticed, making it clear that the legislation

is to be strictly 'provincial' and 'in and for the province'; but, at the same time, giving the provinces their own residuary power to make laws in relation to 'generally all matters of a merely local or private nature in the province.'

Then again it is to be noticed, and the Privy Council has in several judgments called attention to the fact, that the distribution of legislative power under the British North America Act is, so far as the internal affairs of Canada are concerned, exhaustive. That is to say, there is no possible law relating solely to the internal affairs of Canada which it is not within the power of the Dominion parliament to pass, unless it is a law which comes under the sixteen classes of subjects exclusively assigned to the provincial legislatures. But here we touch again a point in which the Canadian constitution is very significantly similar in principle to that of the United Kingdom, and dissimilar to that of the United States. Under the American constitution there are some laws which, though relating entirely to the United States, no legislature in that country — neither Congress nor state legislature—can enact. As we have seen in the provisions of that constitution above quoted, there are some powers neither delegated to the United States, nor left with the states, but 'reserved to the people.' Congress has only the powers conferred upon it by the federal constitution; the state legislatures have only the powers conferred upon them by the state constitutions, themselves, of course, subject to the federal constitution. Some powers belong to neither. All this is in contrast to the British constitution of which the omnipotence of parliament is a fundamental principle. As the jesting words of the lawyers put it, parliament can do everything except make a man a woman, or a woman a man. The framers of the Confederation Act, indeed, could not make the Dominion parliament omnipotent even over the internal affairs of Canada, for they were not commissioned to create a unified government for the Dominion, as, it is no secret, Sir John Macdonald would have preferred. Their task was to frame a federal constitution on the basis of the Quebec Resolutions. But they none the less followed British principles as far as this permitted.

General Scheme of Dominion Powers

When the list of powers assigned exclusively to the Dominion parliament is examined, it will readily be seen that, for the most part, they are naturally and necessarily matters for Dominion administration. Therefore the people of the Province of Quebec, though too much attached to their local laws and customs to fall in with the idea of complete legislative union, were willing to concede these to the federal legislature. As to their criminal law, from the first this had been English; and as to commercial matters, they had previously adopted of their own free will the general principles of English commercial law. And, to secure to the Dominion parliament complete control of the enumerated classes of subjects committed to it, the 91st section of the Federation Act, as we have already seen, expressly enacts at its conclusion, that nothing coming within them shall be deemed 'to come within the class of matters of a local and private nature comprised in the enumeration of the classes of subjects of this Act assigned exclusively to the Legislatures of the Provinces.' Now the Privy Council has decided that this is not to be read as referring only to what may be called the provincial residuary power under No. 16 of section 92, to make laws in relation to 'Generally all matters of a merely local or private nature in the Province,' but that it refers equally to all the provincial powers under section 92 of the act. The effect, then, of this provision is twofold. In the first place the Dominion parliament is empowered to encroach upon what would otherwise be the exclusive provincial area, so far as is necessary to the complete exercise of its own enumerated powers; and, secondly, the provincial legislatures cannot claim the right to legislate in relation to any of those Dominion powers, by confining the operation of such legislation to the province, as, for example, by enacting a bankruptcy law for the province, even though there be no Dominion legislation at all on the subject. The Privy Council, indeed, in the Fisheries Case (1898) found enough in the preceding words of section 91 to show that the provincial legislatures

have no such right, and that any legislation which falls strictly within any of the classes of subjects enumerated in section 91 is beyond the power of provincial legislatures to enact. And, therefore, they held in this case that sea coast and inland fisheries, being a Dominion subject exclusively, restrictions or limitations by which public rights of fishing are sought to be limited or controlled can be the subject of Dominion legislation only.

The Provincial Residuary Power

But, as we have had occasion thus to refer to the provincial residuary power, it is appropriate to consider what is the meaning of its terms. It is quite clear that they do not mean local in a spot in a province, but local in the sense of not extending beyond the province. For the Privy Council has recently held the Manitoba Liquor Act *intra vires* under this power, although it purports to prohibit the use of intoxicating liquors throughout the whole Province of Manitoba. And the word ' merely '—' matters of a merely local or private nature in the province '—would seem to signify that legislation under this clause must be such as not to touch by its immediate and direct operations people outside the province. But this very decision as to the Manitoba Liquor Act shows that legislation does not cease to be of ' a merely local or private nature in the province ' because it may have an indirect effect on matters outside the province, as by interfering with sources of Dominion revenue, or the business operations of people carrying on particular trades under Dominion licences. Moreover a matter at one time of a merely local or private nature in a province may cease to be so, and assume an importance to the whole Dominion ; and, in such case, it clearly would be within the Dominion residuary power to legislate upon it, for, by ceasing to be of merely a local or private nature in the province, it would cease to be among the matters exclusively assigned to the provinces. And the Privy Council has also decided that if a Dominion act, the objects and scope of which are general, and within the proper competency of the Dominion parliament to deal with, provides that it shall come

into force in such localities only in which it shall be adopted in a certain prescribed manner, or, in other words, by local option, this conditional application of the act does not convert it into legislation in relation to matters of a 'merely local or private nature' within the meaning of No. 16 of section 92 of the British North America Act. The manner of bringing such act into force does not alter its general and uniform character.

Predominance of Dominion Laws

Where the Dominion parliament has legislated within the proper scope of its powers, whether its residuary or its enumerated powers, its legislation will prevail over any provincial legislation which directly conflicts with it, whether the latter be prior in enactment or not, for as far as Dominion powers are concerned there is legislative union for the whole of Canada. And this is so even when the Dominion parliament has invaded the provincial area by legislation properly ancillary to the exercise of its enumerated powers. Thus the Privy Council held in one case that the provisions of an Ontario act giving an assignment for the benefit of creditors precedence over judgments and executions not completely satisfied by payment, were perfectly valid under provincial jurisdiction over property and civil rights in the province; and yet stated that such legislation might properly be enacted also by the Dominion parliament as ancillary to legislation upon bankruptcy and insolvency, and that then such Dominion legislation would place in abeyance the provincial legislation. But it does not appear that the mere non-exercise by the Dominion parliament of its powers in such cases can be invoked to restrain the provinces. Moreover, even where the Dominion has legislated, under its residuary powers, for the peace, order, and good government of Canada upon some non-provincial subject, this will not prevent the provinces legislating upon the same subject to meet their peculiar local needs.

But as to the powers of the Dominion parliament enumerated in section 91 of the British North America Act, these belong to it exclusively in the strictest sense; and provincial

legislatures cannot legislate in relation to these subject-matters, even though the Dominion parliament has not actually legislated thereon itself. For, as section 91 expressly declares, if any matter comes within the enumerated Dominion powers, it is not to be deemed to come within the enumerated provincial powers. For example, inasmuch as the Dominion parliament has exclusive power to legislate in relation to sea coast and inland fisheries, it alone can enact regulations for the conduct of such fisheries; and the Privy Council has decided that, even though it may not have done so, the provinces cannot enact such fishery regulations. As their lordships say, the provinces cannot enact a bankruptcy law for the province, or a copyright law for the province, even though there be no Dominion legislation on these subjects.

On the other hand there is nothing to prevent the Dominion parliament, when legislating under its enumerated powers, confining the operation of its legislation to one or more provinces, and not extending it to the whole Dominion. If it were not so, there would be some laws which neither the Dominion nor the provinces could enact, although relating solely to the internal affairs of Canada. There is nothing in section 91 to prohibit the Dominion parliament thus limiting the scope and area of its legislation. The Supreme Court has clearly recognised this in more than one case, as, for example, that the Dominion parliament could legislate for the compulsory winding up on insolvency of one particular banking institution. Nor does there seem any doubt that parliament could localize its legislation under its residuary power in the same way when legislating in relation to some non-provincial subjects, and confine the operation of its act to one or two provinces only. For it might be for the peace, order, and good government of the whole Dominion that a state of things existing only in one or two provinces should be legislated upon; and, if uniform legislation upon it is desirable in two provinces, certainly no provincial legislature could enact such legislation. It therefore must follow that the Dominion parliament could do so; and it is nothing to the point that the object might be effected by concurrent legislation of the two provincial legislatures. And,

even if it were arguable whether the subject of the Dominion legislation did equally concern all or more than one of the provinces, the decision as to this of the Dominion parliament, in its wisdom, must constitutionally be accepted as final.

Before passing on to speak of provincial powers, we may note, as the Supreme Court has recently affirmed, that the Dominion parliament can, in matters within its sphere of jurisdiction, impose such duties as it sees fit upon any subjects of the Dominion, whether they be officials of provincial courts, other officials, or private citizens. Thus it can impose new duties upon the existing provincial courts, or give them new powers as to any matters which do not come within the subjects assigned exclusively to the provincial legislatures. So, again, the Privy Council has very recently held that the Dominion parliament can impose upon a municipality the duty of contributing to the cost of properly protecting level crossings over Dominion railways.

Limitation of Provincial Powers

It is quite clearly settled by judgments of the Privy Council that provincial legislatures have no powers beyond those expressly conferred upon them by the British North America Act. They cannot fall back upon any powers exercised before Confederation. But it must, of course, be remembered in this connection that No. 16 of section 92 gives them a general power to make laws in relation to 'all matters of a merely local or private nature in the Province,' and also that they must have, by virtue of their character as legislative bodies, such powers and privileges as are necessarily inherent in such bodies, to protect their deliberations from disturbance. The Privy Council has in several judgments recognised such inherent powers in colonial legislatures—powers, however, protective and self-defensive only, and not punitive. For, as the Privy Council has pointed out, it must not be inferred that a colonial legislature can claim all such powers of punishing for contempt, for example, as the parliament of the United Kingdom possesses under the *lex et consuetudo parliamenti*, the product of ancient

usage and prescription. But the matter is of small importance, since the Privy Council has also held in the case last referred to, that under No. 1 of section 92, which gives power to provincial legislatures to amend the constitution of the province from time to time, they may pass acts for defining their own powers and privileges, although not to the extent of constituting themselves Courts of Record for the trial of criminal offences. As to the like powers in the Dominion parliament, they are expressly provided for by section 18 of the British North America Act as amended by a later imperial act, which, however, provides that no act of the parliament of Canada defining such privileges, immunities, or powers shall 'confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and the members thereof.'

Lastly we may observe of the powers of provincial legislatures that they are coequal and co-ordinate in every respect. As the Privy Council has said, the British North America Act placed the constitutions of all provinces within the Dominion on the same level; and what is true with respect to the legislature of Ontario, for instance, is equally applicable to the legislature of New Brunswick.

With these introductory observations upon the salient features of the sections of the Federation Act which distribute legislative power between the Dominion parliament and the provincial legislatures, we may proceed to mention some general principles in connection with that subject which have been brought to light by the decisions of the courts.

The Federation Act as a Whole

In construing the British North America Act we must consider its provisions as a whole, and cannot safely interpret the various classes of subjects assigned to the provinces by section 92 without considering those assigned to the Dominion parliament by section 91. In many cases these classes overlap, or interlace, in such a way that what is by one

section given to parliament would fall within some class of subject exclusively assigned to the provincial legislatures, if the latter were taken by itself. A notable instance is to be found in the fact that property and civil rights in the province is a subject assigned exclusively to the provincial legislatures; and yet the Dominion parliament is given exclusive power to make laws in relation to bills of exchange and promissory notes, and in relation to bankruptcy and insolvency, and to copyrights and patents, and to several other subjects, which shall be binding in all and each of the provinces, and yet which relate in the most direct and obvious way to property and civil rights. And, as the Privy Council has pointed out in more than one case, it cannot be that, when legislating under its residuary power to make laws for the peace, order, and good government of Canada, the Dominion parliament cannot incidentally affect property and civil rights, although that residuary power is expressed to be confined to matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces. On the other hand, it is impossible to deny that many of the powers exclusively assigned to the provincial legislature must, in their exercise, affect the operations of trade and commerce, and might entirely stop some kinds of trade and commerce in the province, as, for example, a provincial enactment absolutely prohibiting all dealings of any kind in intoxicating liquors, which nevertheless, it is quite decided, a provincial legislature has power to pass as 'a matter of a merely local or private nature in the Province.' And yet section 91 says that parliament is to have exclusive power to make laws in relation to the regulation of trade and commerce. Again, the provincial power over solemnization of marriage in the province would fall within the power over marriage and divorce, were it not that the latter is assigned exclusively to the Dominion and the former to the province. And so it is clear, in either case, that the narrower class of subject must be considered as excepted out of and excluded from the broader class; or, in other words, the class of subject which is expressed in the wider and vaguer terms must be construed in such a way as not to include the class expressed

in the more specific and restricted terms. The imperial parliament could not have intended that the powers exclusively assigned to the provincial legislatures should be absorbed in those given to the Dominion parliament, and they certainly did not intend the converse. No doubt this 'double enumeration,' as it has been termed, causes difficulty in the interpretation of the Federation Act; but it is one of the marks of the high wisdom and statesmanship of the framers of the constitution of the Dominion that they refrained from being too definitive and exact in their language, and so imparted elasticity to the constitution, and left it to the experience of the working of the act, under the guidance of the courts, to bring more precision and restriction by degrees. The terms of the enumerations in sections 91 and 92 in many cases contain rather general principles than precise definitions of powers.

Plenary Powers of Canadian Legislatures

There are, perhaps, no utterances of the Privy Council in the constitutional cases more pregnant and important than those in which it affirms that the powers, whether of the Dominion parliament or of the provincial legislatures, are, in their own words in Hodge *v.* The Queen in 1883, 'as plenary and as ample within the limits prescribed as the Imperial parliament, in the plenitude of its power possessed, and could bestow.' Of course the powers of all colonial legislatures have been in a sense delegated to or bestowed upon them by the imperial government or parliament. But what the Privy Council says is that those powers, once bestowed, are not to be exercised as though the legislatures which have them were mere delegates or agents of the imperial parliament, so that, for example, they should be unable, as are the state legislatures in the United States, to delegate them to others. Within the limits prescribed Canadian legislatures are as supreme as is the imperial parliament itself, and all legislative inferiority and subordination, so far as the internal affairs of Canada are concerned, is for ever gone. No other view than this could for long have

satisfied the people of a great and expanding country such as the Dominion ; nor would any other view have satisfied the statement in the preamble of the Federation Act that the constitution bestowed by it was to be 'similar in principle to that of the United Kingdom.' For the sovereignty of parliament, as Professor Dicey has said, is (from a legal point of view) the dominant characteristic of English political institutions. It is difficult, indeed, to see how any other view could have been taken ; and yet the minds even of some lawyers have seemed slow to grasp the fact that legislative power under the British North America Act is really plenary. We have seen this in a marked degree of late by the persistent but futile efforts made to prove that, though provincial legislatures have power given to them to make laws in relation to property and civil rights in the province, and to the administration of justice in the province, yet they cannot interfere with vested rights nor with pending litigation. Legislatures may or may not prove themselves fit to be trusted with plenary powers, but free legislatures are alone worthy of free people.

The subject of the plenary powers of Canada's legislatures may suggest to some readers a question as to their relation to imperial treaties. There is no such provision in the constitution of the Dominion as in that of the United States, which provides that : 'All treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.' And there can be no doubt that no Dominion or provincial act would be invalid because it conflicted with an imperial treaty, unless the latter had been confirmed by imperial statute. But the matter is of small importance. Any Dominion act which was repugnant to an imperial treaty would doubtless be reserved by the governor-general to await His Majesty's pleasure : or, if not, there would still remain the imperial veto power. Provincial acts might no doubt conflict with imperial treaties—as, for example, in the matter of the treatment of aliens—but they would be subject to the Dominion veto ; and for the Dominion government to refuse to veto such provincial acts, if the imperial government requested it so to do, would be tantamount to a declaration of

independence. Moreover, section 132 of the British North America Act specially provides that: 'The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada, or of any Province thereof, as part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.'

As has been already intimated, the powers of the Canadian legislatures being plenary, there is nothing to hinder them entrusting to municipalities, or to the lieutenant-governor in council, or to others, authority to pass by-laws, or make regulation for purposes stated in the statute, and to enforce such by-laws and regulations. By so doing, as the Privy Council has pointed out, a legislature does not efface itself, but 'retains its powers intact, and can whenever it pleases destroy the agency it has created and set up another, or take the matter directly into its own hand.' But, of course, neither Dominion parliament nor provincial legislature can delegate powers which it does not itself possess. Again, there can be no doubt that the Dominion parliament can, when legislating upon its own subjects, impose duties upon municipalities, just as it can upon provincial courts. Thus when, through the Railway Committee of the Privy Council, it imposed upon a municipality the duty of contributing to the expense of protecting a level crossing over a Dominion railway, the Privy Council sustained it in so doing. So, again, parliament, or provincial legislature, can legislate conditionally, as by way of local option; or it can legislate by reference to the enactments of another legislature, adopting the latter, and so making them its own. In short, there is no better way of expressing what it can do than the words of the Privy Council, already quoted, that their 'authority is as plenary and ample within the limits prescribed as the Imperial parliament, in the plenitude of its powers possessed, and could bestow.'

It is a further necessary deduction from the plenary character of legislative power under the Federation Act that, except for the purpose of ascertaining to what class of subjects an act really belongs, courts have no right to concern themselves with the motives of legislation; or, as already

intimated, to declare a statute invalid because it injuriously affects vested rights. It would be impossible to say that the Canadian constitution was similar in principle to that of the United Kingdom, if the British North America Act provided, after the manner of the United States constitution, that no provincial legislature should 'pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.' Under a constitution as free as that of the United Kingdom, the appeal, when legislation does not commend itself to the conscience of the community, or conform to what are considered sound principles, must be, not to the restrictions of a rigid fundamental law, but to the electorate.

Dominion Interference with Provincial Legislation

The fact that legislation of the Dominion parliament, whether under its residuary power to make laws for the peace, order, and good government of Canada in relation to all non-provincial subjects, or under its enumerated powers in section 91, interferes with, or even defeats the object of provincial acts, is no objection to its validity, provided it is not itself legislation in relation to one of the provincial classes of subjects. Thus the Privy Council has held that, under its residuary powers, the Dominion parliament had jurisdiction to pass the Canada Temperance Act, although that act, where called into operation, might quite destroy the revenue which provincial legislation aimed at securing by licensing taverns for the sale of intoxicating liquors. The same principle applies *a fortiori* to Dominion legislation under the enumerated heads in section 91. But in the latter cases Dominion legislation may not only intrude upon what apparently is the exclusive provincial area, where such right of intrusion is necessarily implied by the very terms used in describing the enumerated Dominion powers, but also where such intrusion is necessarily incidental to full and effective exercise of such Dominion powers. Thus the Privy Council has held that, when legislating in relation to a work or undertaking connecting a province with any other or others of the provinces, or extending beyond the limits of one province, the Dominion

can grant all powers required for the construction and establishment of such work or undertaking, even though in so doing it may seem to invade matters otherwise within exclusive provincial jurisdiction. This is not only because the enumerated Dominion powers are granted to the Dominion exclusively 'notwithstanding anything in this Act,' which is known as the *non obstante* clause: but because, as we have seen, section 91 specially enacts that no matter coming within any of the enumerated Dominion subjects shall be deemed to come within the provincial classes of subjects enumerated in section 91. Nor, when we speak of such intrusion on the provincial area having to be necessarily incidental to the Dominion legislation, must the word 'necessarily' be pressed too far. Reasonably necessary, perhaps, it must be: but if one of several possible courses must be taken in order to make the Dominion legislation effective, it is not for the courts to dictate to parliament which of those courses it shall adopt. This seems clearly to be the result reached on the authorities. But it is a different thing when Dominion legislation is under its residuary power, because there its power is especially confined to 'matters not coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces.' Therefore, when legislating merely under this residuary power to make laws for the peace, order, and good government of Canada, parliament has no right to encroach directly upon the provincial area at all, though, as we have seen, the fact that it may indirectly defeat the operation of provincial acts so long as it remains in operation does not make such Dominion legislation *ultra vires*. And the Privy Council has also said that it does 'not doubt that some matters in their origin local and private might attain such dimensions as to affect the body-politic of the Dominion, and to justify the Canadian parliament in passing laws for their regulation or abolition in the interests of the Dominion.'

Provincial Interference with Dominion Legislation

It is impossible to claim for the provincial legislatures any analogous right to interfere with the Dominion classes of sub-

jects. They have not the advantage of the *non obstante* clause above referred to, and are, moreover, subject to the concluding words of section 91, which declare that the Dominion enumerated classes of subjects shall not be deemed to come within the classes of subjects assigned to the provinces. On the other hand, the Privy Council has quite established that, provided provincial legislation is in truth strictly within one of the enumerated classes of subjects in section 92, the fact that it may incidentally touch or affect something which might otherwise be held within Dominion exclusive jurisdiction, or indirectly interfere with Dominion legislation, even upon the Dominion enumerated subjects, in no way destroys its validity. *A fortiori* where provincial legislation merely interferes with Dominion legislation under its residuary power, or even directly intrudes upon that area, its validity remains unaffected, for provincial powers are expressly excluded from that Dominion field of legislation. At the same time it must always be remembered that valid Dominion legislation will override and place in abeyance provincial legislation directly conflicting with it.

Provincial Independence and Autonomy

Neither the Dominion nor the provinces are subject to having their legislation declared invalid merely because they may be thought to have used their powers unwisely, or interfered unjustly with vested rights, or disregarded other sound principles of legislation. The independence and autonomy of the provinces under the Canadian constitution is further illustrated by the freedom they enjoy in the matter of limiting the range which would, were it not for their legislation, be open to the federal parliament. In words used by the Privy Council in 1887, the British North America Act ' makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution under which no one of the parts can pass laws for itself except under the control of the whole, acting through the governor-general.' But the question the

courts have to answer when a contention arises as to the validity of a provincial statute, is not, as in the United States, whether the action of the provincial legislature comes into conflict with the power vested in the federal parliament, but 'whether the one body or the other has power to make a given law. If they find that on the due construction of the Federation Act a legislative power falls within section 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which would otherwise be open to the Dominion parliament.' And so the Supreme Court has recently held, overruling certain prior Canadian decisions, that, although under section 91 the Dominion parliament has exclusive power to make laws in relation to 'the fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada,' this does not prevent the provincial legislatures authorizing municipalities to tax such salaries under their power over 'direct taxation within the province.' And so, again, the Privy Council held in 1887 that under this last power a provincial legislature could impose direct taxes on all banks doing business in the province, although 'banks' are a subject exclusively under Dominion jurisdiction, and although it was contended that the provinces might lay on taxes so heavy as to crush all banks out of existence. In like manner, in 1897, the Privy Council upheld an Ontario act requiring every brewer, distiller or other person, though duly licensed by the government of Canada for the manufacture and sale of fermented, spirituous and other liquors, to take out licences to sell the liquors manufactured by them, and pay a licence fee. And in 1902 it upheld a Manitoba act as relating to a matter of a merely local nature in the province which prohibited all use in Manitoba of intoxicating liquors as beverages, and prohibited or restricted in various ways the importation, exportation, manufacture, keeping, sale, purchase and use of such liquors. And yet the act in its practical working, as was pointed out, must interfere with Dominion revenue, and, indirectly at least, with business operations outside the province.

Legislative Power Distributed by Subject, not by Area

It is important to notice that under our constitution legislative power is distributed by subjects, and not by area. We have already seen that a provincial legislature cannot assume power to legislate upon a Dominion subject by confining the operation of its legislation to the province. So, likewise, the Dominion parliament cannot assume power to legislate upon a provincial subject by extending the operation of its legislation to two or more provinces; while, on the other hand, there is nothing to prevent the Dominion parliament, at all events when legislating upon one of the subjects enumerated in section 91, confining its legislation to a single province. For, as has been already pointed out, no matter coming within any of those enumerated classes of subjects in section 91 is to be deemed included in any of the classes of provincial subjects; and therefore, as the provinces could not pass such an act, it follows that the Dominion parliament could. But it must not be supposed from this that the Dominion parliament could never enact provisions identical with those which the provinces could enact under one or other of its powers. On the contrary the Privy Council has pointed out that the perfectly valid provisions of a provincial act imposing a forced commutation of their claims upon two beneficiaries of an insolvent charitable society might well be included in a Dominion act relating to bankruptcy and insolvency, as might also the equally valid provisions of an Ontario act giving a voluntary assignment for the benefit of creditors precedence over judgments and executions not completely satisfied by payment. So, again, a prohibition law might be passed by a provincial legislature as relating to a matter of a merely local and private nature in the province; and yet its provisions might be embraced in a Dominion prohibition act passed in furtherance of the peace, order, and good government of the Dominion at large. For prohibition is a subject of exclusive provincial jurisdiction so far and so long only as it presents the aspect of a matter of a merely

local and private nature in the province ; and if, to the wisdom of the Dominion parliament, it appears to have assumed a wider aspect and become a matter pertinent to the peace, order, and good government of the country at large, or of two or more provinces, the Dominion can deal with it under its residuary powers. But parliament cannot, under colour of genêral legislation, deal with what are provincial matters only, any more than provincial legislatures can, under the mere pretence of legislating upon one of the matters enumerated in section 92, really legislate upon a matter assigned to the jurisdiction of the parliament of Canada.

It is clear, then, that there can be a domain in which Dominion and provincial legislation may overlap, in which case neither legislation will be *ultra vires* if the field is clear : but if the field is not clear, and in such a domain the two legislations meet, then the Dominion legislation must prevail. The Privy Council has recently expressed the matter in this way in a case in which it held that, although the right to recover damages for negligence was a civil right—and, of course, property and civil rights in the province is a matter of provincial jurisdiction under section 92 of the Federation Act—yet a Dominion enactment prohibiting railway companies under Dominion jurisdiction from contracting out of liability to pay damages for personal injuries to their servants was valid, as properly ancillary to railway legislation : as would also be, their lordships say, provisions relating to expropriation of land, conditions to be read into contracts of carriage, and alterations upon the common law of carriers. In the same way, in another case, they upheld the sections of the Dominion Banking Act relating to warehouse receipts, although conflicting with provisions of provincial acts respecting such documents. But, as we have already seen, a provincial legislature is not incapacitated from enacting a law otherwise within its proper competency merely because the Dominion parliament might under section 91, if it saw fit, pass a general law which would embrace within its scope the subject-matter of the provincial act. On the other hand, as has already been incidentally stated, the abstinence of the Dominion parliament from legislating to the full limit of its

powers cannot have the effect of transferring to any provincial legislature the legislative powers assigned to the Dominion by section 91 of the British North America Act. This is, indeed, necessarily implied in the fact already stated, that a provincial legislature cannot under any circumstances legislate upon any of the Dominion classes of subjects enumerated in section 91, even though they may limit their legislation to the province. It has, however, been contended unsuccessfully, in two or three cases before the Privy Council, that provincial powers of legislation have been restricted and placed in abeyance by the fact that the Dominion parliament has refrained from action, or because the latter has legislated upon the same subject-matter under its residuary power to make laws for the peace, order and good government of Canada upon non-provincial subjects, but conditionally only upon the exercise of local option (as in the case of the Canada Temperance Act, 1886), which local option has not been exercised in favour of the act. But as to the latter point, the Privy Council said in the Liquor Prohibition Appeal, 1895 : ' Provincial prohibition in force within a particular district will necessarily become inoperative whenever the prohibitory clauses of the Act of 1886 have been adopted by that district. But their lordships can discover no adequate grounds for holding that there exists repugnancy between the two laws in districts of the Province of Ontario where the prohibitions of the Canadian Act are not in force.' As regards the former point it was argued unsuccessfully in the appeal to the Privy Council respecting the constitutionality of the Ontario Assignment for Creditors Act that, inasmuch as after Confederation the Dominion parliament had enacted a complete system of bankruptcy and insolvency which, though in part proceeding *in invitum* against the debtor, yet in other part proceeded upon the basis of a voluntary assignment by the debtor for the benefit of creditors, and in connection therewith contained provisions practically the same as those in the Ontario statute, it had thereby indicated what it regarded as a proper and complete system of bankruptcy and insolvency ; and by repealing that system in 1880 it had, in like manner, indicated that its policy was that there should be no such system in operation

in the Dominion ; and that it was not, after that, competent for the provinces to re-enact the provisions which had been based upon a voluntary assignment, and which were not merely ancillary to, but formed an integral part of the whole system of bankruptcy and insolvency which the Dominion parliament had seen fit to repeal.

That the provincial legislatures—and the same, of course, applies equally to the Dominion parliament — cannot do indirectly what they cannot do directly, is a proposition which has been affirmed by several provincial decisions, and has now received the *imprimatur* of the Privy Council in a judgment given in 1899, in which, referring to the contention that if a provincial legislature did not directly enact that a Dominion railway company must fence its railway line, but only that, if it did not, it should be responsible for cattle killed thereon, the provincial legislation might be valid, it says : ' Their lordships are not disposed to yield to that suggestion, even if it were true to say that the statute was only an indirect mode of causing the construction to be made, because it is a very familiar principle that you cannot do indirectly that which you are prohibited from doing directly.'

Aspects of Legislation

Perhaps one of the most subtle of the principles which have been evolved by the Judicial Committee of the Privy Council in the course of its judgments, and more especially in its judgments relating to statutes prohibiting or regulating traffic in intoxicating liquors, is that subjects which in one aspect and for one purpose fall within the jurisdiction of the provincial legislatures, may in another aspect and for another purpose fall within the jurisdiction of the Dominion parliament. And it is to be observed that by ' aspect ' in this connection is meant the aspect or point of view of the legislator in legislating—the object, purpose and scope of the legislation. Thus the Privy Council shows that the prohibition of the use and sale of intoxicating liquors may be dealt with legislatively from a merely local and private aspect in the province ; and, then, it is within the power of provincial legislatures. But it

may also be dealt with from the aspect of promoting and protecting public order and safety and good morals in the Dominion, as it was in the Canada Temperance Act, 1878; and in that case it will fall within the general legislative powers of parliament. So there may be legislation in respect to traffic in liquors in two different aspects, one contemplating its regulation in the general interests of the Dominion, and the other in the interests of the good order of the municipalities. In the one case it would be for the Dominion, and in the other for the provinces. And in its judgment upholding the Canada Temperance Act, 1878, the Privy Council points out that although it was to be brought into force in those localities only which adopted it by local option in the prescribed manner, it was nevertheless not to be considered as relating to matters of a merely local or private nature in the province, within the meaning of No. 16 of section 92 of the British North America Act, because 'the object and scope of the legislation are still general, namely to promote temperance by means of a uniform law throughout the Dominion.' And the Privy Council has also called attention to the interesting fact that matters which at one time may only admit of being treated in a local or provincial aspect, may at another time assume a phase in which they may admit also of being treated in a Dominion aspect. Thus at all times an act restricting the right to carry weapons of offence, and their sale to young persons within the province, would be within the authority of the provincial legislatures. But traffic in arms, or the possession of them under such circumstances as to raise a suspicion that they were to be used for seditious purposes, or against a foreign state, are matters which might be conveniently dealt with by the parliament of the Dominion.

So, again, legislation in relation to trade from the aspect of the general regulation of trade and commerce, is exclusively a matter for the Dominion parliament; but this does not prevent provincial legislatures regulating particular trades and businesses from different local aspects, as, for example, regulating the business of insurance companies in the province with a view to securing uniform conditions in their policies. And the provincial courts in several judgments have upheld

provincial statutes restraining, under penalties, certain acts in relation to certain businesses, as being legislation in relation to property and civil rights in the province ; although the Dominion parliament might legislate against similar acts, under their jurisdiction over criminal law. Thus the Ontario courts in one case upheld a Dominion act to provide against frauds in the supplying of milk to cheese factories, while in a previous case they had also upheld a very similar provincial act, on the ground that it merely protected private rights. As one learned judge put it :

> The Dominion Act is universal in its scope and application, and prohibits the forbidden acts by all persons whomsoever under all circumstances, and in all places throughout the Dominion, while the provincial Act is confined to the dealings between these two particular kinds of manufacturers [*sc.* cheese and butter manufacturers] and their customers. The one has all the features of a public criminal law passed in the interest of the general public ; the other is merely the regulation of the mode of carrying on a particular trade or business within the province, so as to secure fair and honest dealing between the parties concerned.

The True Nature and Character of Legislation

It is therefore a corollary from what has just been stated that, when we are concerned with the question of the constitutionality of Canadian statutes, the true nature and character of the legislation in the particular instance under discussion, as the Privy Council has said—its grounds and design, and the primary matter dealt with—its object and scope—must always be determined, in order to ascertain the class of subject to which it really belongs, and any merely incidental effect it may have over other matters does not alter the character of the law. And so in one case the Privy Council held a Quebec act which purported on its face to be a licence act, imposing a licence on persons carrying on the business of insurance in the province, to be invalid because, in truth, it was a stamp act, and imposed

taxation which was not direct taxation. Their lordships say: 'The result is this, that it is not in substance a Licence Act at all; it is nothing more nor less than a simple Stamp Act on the policies, with provisions referring to a licence, because, it must be presumed, the framers of the statute thought it was necessary, in order to cover the kind of tax in question with legal sanction, that it should be made in the shape of the price paid for a licence.'

And it is well worth noting in this connection the words of the late Lord Watson, whose name and fame are inseparably connected with the decisions on constitutional questions arising under Canada's Federation Act, uttered by him in the course of the argument before the Judicial Committee on the Liquor Prohibition Appeal, 1895:

> There may be a great many objects [*sc.* in such legislation], one behind the other. The first object may be to prohibit the sale of liquor, and prohibition the only object accomplished by the Act. The second object probably is to diminish drunkenness; the third object to improve morality and good behaviour of the citizens; the fourth object to diminish crime, and so on. These are all objects. Which is the object of the Act? I should be inclined to take the view that that which it accomplished, and that which is its main object to accomplish, is the object of the statute; the others are mere motives to induce the legislature to take means for the attainment of it.

It must of course be remembered that, when once it is clear to what class any particular act belongs, and therefore whether it is within the jurisdiction of parliament or within that of the provincial legislatures, the motive which induced parliament or a local legislature to exercise its power in passing it cannot, as has already been pointed out, affect its validity.

The whole of a statute is not necessarily invalid because part of it may be *ultra vires*. This will not be so if it appears that the one part is separate in its operation from the other part, so that each is a separate declaration of the legislative will; and unless it appears that the object of the act is such

that it cannot be attained by a partial execution. To put the matter in another way, if one or more sections of an act appear proper to be treated as independent substantive enactments, the question of their constitutionality may be considered apart from the rest of the act. And again, an act may sometimes be *intra vires* and constitutional in some of its applications, while *ultra vires* in others. Thus, to give an example by way of illustration, a Manitoba enactment that no corporation not incorporated under provincial statute should be capable of holding real estate in the province, unless under licence from the lieutenant-governor in council under any statute of the province, was held *ultra vires* so far as it related to the Canadian Pacific Railway Company, a Dominion railway under the exclusive jurisdiction of the Dominion parliament. And in this connection may be cited the imperial statute, known as the Colonial Laws Validity Act, which enacts that :

> Any colonial law which is or shall be in any respect repugnant to the provisions of any Act of parliament extending to the colony to which such law may relate, or repugnant to any order or regulation made under authority of such Act of parliament, or having in the colony the force and effect of such Act, shall be read subject to such Act, order, or regulation, and shall to the extent of such repugnancy, *but not otherwise*, be and remain absolutely void and inoperative.

Proprietary Rights under the Federation Act

Whatever proprietary rights were at the time of the passing of the British North America Act possessed by the various provinces remain vested in them, except such as are by any of its express enactments transferred to the Dominion. The fact that legislative jurisdiction in respect of a particular subject-matter is conferred upon the Dominion parliament or the provincial legislatures respectively, affords no evidence or presumption that any proprietary rights with respect to it were transferred to the Dominion or to the provinces. And the Dominion parliament has no power, by virtue of its

legislative jurisdiction under section 91 of the Federation Act, to confer upon others proprietary rights when it possesses none itself, unless under such of the enumerated powers in that section as necessarily imply the power to deal with property, such, for example, as the power to make laws in relation to railways connecting a province with any other or others of the provinces. For the rest, power to make laws in relation to property is exclusively in the provincial legislatures. The Privy Council made all this very clear by its judgment in 1898 in what is known as the Fisheries case. But so far as power to interfere with property is necessary to the effectual exercise of the Dominion powers enumerated in section 91, the power exists. Thus in 1906 the Privy Council decided that the Dominion parliament can dispose of provincial crown lands, and, therefore, a provincial foreshore to a harbour, for the purpose of a Dominion railway.

IV

SPECIFIC POWERS OF LEGISLATION

IT remains to notice the interpretation put by the courts upon the expressly enumerated powers of the Dominion parliament and the provincial legislatures respectively, where such interpretation seems likely to possess a special interest for the general reader.

Dominion Powers under Section 91

No. 2. The Regulation of Trade and Commerce.—This seems to demand a word of explanation. It may be said that the reported decisions throw light rather on what this power does not include than on what it does. It is clearly settled that it does not include power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance, in a single province, or the trade in intoxicating liquors in a single province. The Privy Council has said, in general terms, that it includes ' political arrangements in regard to trade, requiring the sanction of

parliament, regulation of trade in matters of interprovincial concern, and may perhaps include general regulation of trade affecting the whole Dominion.' On the whole, however, the authorities do not permit us to be much more specific than Edward Blake was on the argument of the Liquor Prohibition Appeal, 1895, before the Privy Council, when he said that those regulations of trade are in the Dominion, and wholly in the Dominion, 'which march wider, which cut deeper, which are of more general application, which go beyond simple police matters dealing with the varying circumstances and conditions of small and differently circumstanced localities.'

No. 10. Navigation and Shipping.—It may perhaps be worth while to mention in regard to this a Manitoba decision of 1891, which has not, we think, ever been challenged, that this does not mean that a province cannot incorporate a company as carriers of passengers and goods by water, operating within the province: but that what is referred to would seem to be legislation dealing with 'such matters as the law of the road, lights to be carried, how vessels are to be registered, evidence of ownership and title, transmission of interest, and such matters.' Provincial navigation companies must of course be subject to Dominion laws in relation to navigation and shipping; and provincial companies cannot interfere with or impede navigation without obtaining Dominion authority for so doing.

No. 12. Sea Coast and Inland Fisheries.—In its judgment in 1898, in what is known as the Fisheries case, the Privy Council has defined and explained the scope of this power. It says that under it the enactment of fishery regulations and restrictions is within the exclusive competence of the Dominion legislature, and is not within the legislative powers of provincial legislatures: but that while all restrictions or limitations by which public rights of fishing are sought to be limited or controlled can be the subject of Dominion legislation only, it does not follow that provincial legislation is invalid merely because it may have relation to fisheries. For example, provisions prescribing the mode in which a private fishery is to be conveyed or otherwise disposed of,

and the rights of succession in respect of it, would be properly treated as falling under the heading 'property and civil rights' within section 92, and not as in the class 'fisheries' in section 91. So, too, the terms and conditions upon which the fisheries which are the property of the province may be granted, leased, or otherwise disposed of, and the rights which, consistently with any general regulations respecting fisheries enacted by the Dominion parliament, may be conferred therein, appear proper subjects for provincial legislation, either under class 5 of section 92, 'the management and sale of Public Lands,' or under the class 'Property and Civil Rights in the Province.' Their lordships further point out that in addition to their legislative power over sea-coast and inland fisheries, the Dominion parliament has, under No. 3 of section 91, the power of raising money by any mode or system of taxation, and

> their lordships think it impossible to exclude as not within this power the provision imposing a tax by way of licence as a condition of the right to fish. It is true that, by virtue of section 92, the provincial legislature may impose the obligation to obtain a licence in order to raise a revenue for provincial purposes, but this cannot, in their lordships' opinion, derogate from the taxing power of the Dominion parliament.

But they hold also that whatever proprietary rights in relation to fisheries were previously vested in private individuals or in the provinces respectively remained untouched by the British North America Act, and that whatever grants might previously have been lawfully made by the provinces in virtue of their proprietary rights could lawfully be made after that enactment came into force. At the same time, they point out, the power to legislate in relation to fisheries does necessarily to a certain extent enable the legislature so empowered to affect proprietary rights. An enactment, for example, prescribing the times of the year during which fishing is to be allowed, or the instruments which may be employed for the purpose, which the Dominion parliament is undoubtedly empowered to pass, might very seriously touch the exercise of proprietary rights, and the extent,

character and scope of such legislation is left entirely to the Dominion parliament.

No. 21. Bankruptcy and Insolvency.—In a judgment in 1894, the Privy Council pointed out, as features common to all systems of bankruptcy and insolvency, that such enactments are designed to secure that in the case of an insolvent person his assets shall be rateably distributed among his creditors, whether he be willing that they shall be so distributed or not: that they all involve some power of compulsion by process of law to secure to the creditors the distribution amongst them of the insolvent debtor's estate. This, then, according to the Privy Council, is the essential feature of bankruptcy and insolvency legislation properly so called: that it embraces proceedings *in invitum* against an insolvent debtor. Such legislation, therefore, if passed at all in Canada, can only be passed by the Dominion parliament: and as a matter of fact Canada has had no bankruptcy act, save as regards incorporated companies, since 1881. But, as their lordships also point out, there is nothing in this to prevent provincial enactments relating to purely voluntary assignments to trustees for the benefit of creditors; and giving the assignee for creditors under such a voluntary assignment precedence over judgments and executions. A system of bankruptcy, however, they go on to explain, may frequently require various ancillary provisions for the purpose of preventing the scheme of the act from being defeated. It may be necessary for this purpose to deal with the effects of executions, and to interfere with and modify some of the ordinary rights of property and other civil rights, and to provide some mode of special procedure for the vesting, realization and distribution of the estate and the settlement of the liabilities of the insolvent—all matters which would otherwise be within the legislative competence of the provincial legislatures. It is a necessary implication that the British North America Act, in assigning to the Dominion parliament the subjects of bankruptcy and insolvency, intended to confer on it power to interfere with property, civil rights, and procedure within the province, so far as a general law relating to those subjects might affect them, and provincial legislatures would be then pre-

cluded from interfering with this legislation, inasmuch as such interference would directly affect the bankruptcy law of the Dominion parliament.

No. 23. Copyright.—This matter has been referred to above in the section of this article relating to imperial legislation affecting Canada.

No. 24. Indians and Lands reserved for the Indians.—Under the decisions of the Privy Council it is established that, although the British North America Act thus gives the Dominion parliament exclusive legislative authority as to Indians and lands reserved for Indians, it does not vest the Dominion government with the proprietary estate of the crown in the lands. The provinces have or retain, by virtue of section 109 of the act, the right to a beneficial interest in such lands available to them as a source of revenue whenever the estate of the crown is disencumbered of the Indian title, though the surrender purport to be to the Dominion government. Their lordships have further held that when the Dominion government obtains by treaty from Indians the surrender of their interest over a tract of land, acting not as agent or trustee of the province in which the land is situated, but in the national interest, it has no legal claim against the province to whose benefit the surrender enures, for annuities or other money paid or payable under the treaty in respect to such surrender.

No. 25. Naturalization and Aliens.—That the Dominion parliament has power under this head to impart to any person the privileges or any of the privileges of naturalization to be enjoyed by such person within the limits of the Dominion is confirmed by the imperial Naturalization Act, 1870. The question of practical interest and importance is to what extent this exclusive Dominion power debars or restricts provincial legislatures from dealing with aliens ; and recent Privy Council decisions have done much to throw light upon this matter. The net result of these decisions would seem to be that—apart from such matters as the right to exercise the provincial legislative franchise, which comes within No. 1 of section 92 of the British North America Act, 'the amendment from time to time . . . of the Constitution of the Province'—if there is to be

legislation affecting aliens, whether before or after naturalization, merely as such aliens, and not as included in the general population of the province, or not as possessing this or that personal characteristic or habit disqualifying them from being permitted to engage in certain occupations or enjoy other rights generally enjoyed by other people in the province, then it must be Dominion legislation under the above power No. 25, for provincial legislation of that kind is *ultra vires*. Thus, to give a concrete illustration, the Supreme Court of British Columbia in 1904 felt itself bound by these Privy Council decisions to hold that a statute of the provincial legislature enacted in 1903 was *ultra vires* so far as it provided that no Chinaman should be appointed to, or should occupy any position of trust or responsibility in or about a mine whereby, through his ignorance, carelessness or negligence, he might endanger the life or limb of any person employed in or about such mine.

No. 26. Marriage and Divorce.—This matter has figured so prominently in Canada of late that it is right to specially refer to it. It is of course clear, as the Privy Council long ago pointed out, that from this Dominion power must be excepted all legislation in relation to the solemnization of marriage in the province, which is, by No. 12 of section 92 of the British North America Act, exclusively for the provincial legislatures ; and the Privy Council has, on the recent reference regarding the so-called Lancaster Bill, determined the relation of the provincial to the Dominion power. It has held that provinces may enact conditions as to solemnization of marriage which may affect the validity of the contract, and that the Dominion power does not cover the whole subject of such validity. It has held, for example, that a province can enact that no marriage solemnized within its borders shall be valid where the parties, or one of them, are of a particular religion, unless solemnized before some special class of person, say a Roman Catholic priest. But this must not be misunderstood, as perhaps it has been in certain quarters. The Privy Council has by no means held that, if residents of a province where such an enactment exists have their marriage duly celebrated in some other province where no such requirements

exist, their marriage will not be valid. All a province can do is to enact solemnities which shall be necessary to the validity of a marriage, *if celebrated in that province.*

The Hebert case, which attracted public attention in Canada, does not raise any question under the British North America Act, because it turns upon the interpretation and validity of certain enactments of the civil code of Quebec, dating from before Confederation.

It may be of interest to mention incidentally before leaving this subject that in 1908 the Privy Council affirmed, as still existing, the jurisdiction of the judges of the Supreme Court of British Columbia to grant a decree of divorce between persons domiciled in that province, such jurisdiction dating from before Confederation, and not having been interfered with by the Dominion parliament.

No. 29. Such Classes of Subjects as are Expressly Excepted in the Enumeration of Classes of Subjects by the Act Assigned Exclusively to the Legislatures of the Province.—It seems necessary to refer to this only in connection with its application to No. 10 of section 92, which assigns to the provinces exclusive legislative jurisdiction in relation to 'Local Works and Undertakings, other than such as are of the following classes :

> (*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province.
>
> (*b*) Lines of Steam Ships between the Province and any British or Foreign Country.
>
> (*c*) Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces.'

A judgment of the Privy Council given in 1905 appears clearly to establish that a Dominion corporation, incorporating such an undertaking as comes within the above exceptions, is not subject, in carrying on the business authorized by its charter, to the provincial laws of the province where it does so. The same would apply to a bank incorporated under Dominion power No. 15 of section 91. But it is otherwise, as other

Privy Council decisions have shown, when the Dominion is incorporating by virtue of its general residuary powers, and not under its enumerated powers; as, for example, when it is incorporating an insurance company or a building and investment company. It cannot grant more in such cases than the power of acting as a corporation throughout the Dominion; or, in other words, give a Dominion corporate personality, which must be recognized in every province, but will be subject to provincial laws just as much as ordinary individuals or provincial corporations, as to which see *infra*.

Provincial Powers

No. 2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.—The only object of mentioning this power specially is to call attention to the very recent decision of the Supreme Court that it enables a province to exact succession duties in respect to property, other than land, of a deceased resident of the province, although such property may itself be situated abroad; and, conversely, the almost equally recent decision of the Privy Council that money on deposit at a branch of a bank in one province was taxable under the Succession Duty Act of that province, although it belonged to a deceased person who, at the time of his death, was resident and domiciled in another province.

No. 8. Municipal Institutions in the Province.—It seems expedient to devote a few lines to this provincial power on account of the view which, for some time after Confederation, was frequently expressed in Canadian courts that, in itself, it sanctioned the municipalities exercising, or the provincial legislatures entrusting to them, all such powers as were commonly exercised by them before Confederation. It has now, however, become established that all it does in itself is to enable the provincial legislatures to create legal bodies for the management of municipal affairs. Before Confederation the legislature of each province, as then existing, could, and in some cases apparently did, entrust to municipalities the execution of powers which now belong exclusively to the

Dominion parliament. But now, under the British North America Act, a provincial legislature can delegate only such powers as it itself possesses; and, therefore, the extent and nature of the functions which it can commit to the municipalities must depend on its own powers under section 92 of the Federation Act, other than No. 8. It may be worth while, however, to add that in a report to the governor-general in council of 1903 the minister of Justice expressed the view that the decisions of the Privy Council supported the legislature of British Columbia in assuming to prohibit aliens from voting at municipal elections, no doubt because this right of voting may be considered an integral part of municipal institutions, which the provinces have undoubtedly the power to establish under No. 8.

No. 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the Raising of a Revenue for Provincial, Local, or Municipal Purposes.—As to this provincial power it seems sufficient to state that the view affirmed by several of the earlier decisions of the courts, that the words 'and other licences' must be restricted to licences *ejusdem generis*, or, indeed, the view that the four licences specified are comprised in any one genus, so as to exclude those on other trades or businesses, whether wholesale or retail, must be considered overruled. The Privy Council decisions show very clearly that no line of cleavage between Dominion and provincial powers is to be found in the distinction between wholesale and retail. It may be added that as far back as 1897 the Privy Council decided that such taxation by licence as is referred to in No. 9 is direct, and not indirect, taxation; and that, although No. 8 and No. 9 of section 92 are the only items of that section which expressly confer powers of taxation upon the provinces, they would certainly seem to have other powers of taxing, both directly and indirectly, provided that in so doing they are not going beyond matters of 'a merely local and private nature in the province' within No. 16 of section 92, which has already been sufficiently considered.

No. 11. The Incorporation of Companies with Provincial Objects.—There is perhaps no legislative power indicated in the British North America Act the interpretation of which

at first might appear more simple, and, on further consideration, presents more difficulty than this. Ministers of Justice have throughout objected that, as the provincial power of incorporation is confined to provincial objects, provincial acts authorizing companies incorporated under them to transact any business outside the province, although necessary or incidental to the purposes for which such companies are incorporated, are invalid; and have even demanded that such acts shall expressly provide that business shall be carried on only in the province. On the other hand, the provincial contention is that if provincial companies undertake to extend their business, make contracts, and avail themselves of the protection of the courts of any other country, they should be at liberty to do so, when, by the rules of comity among nations, such corporations are recognized and permitted to make contracts, and to sue and be sued: and that a company incorporated in one province can do business in another province, if the latter consents. In a judgment of 1907 the Supreme Court has, indeed, decided, by a majority of judges, that a company incorporated under the authority of a provincial legislature to carry on the business of fire insurance is not inherently incapable of entering, outside the boundaries of its province of origin, into a valid contract of insurance relating to property also outside those limits. But the different judges give very varying interpretations to the words 'companies with provincial objects' in No. 11. One judge holds that they mean companies relating to subjects exclusively assigned to the provinces as distinguished from those assigned to the Dominion, and that they in no way affect the powers of corporations, whether Dominion or provincial (unless excluded by their charters of incorporation), to enjoy rights given by the comity of nations. Another thinks that the phrase means that as between the Dominion and the provinces, the power of the latter in incorporating companies should be analogous to that of independent countries, and that if a corporation desires powers to be exercised in more than one province, it must obtain them from the Dominion parliament; but that this does not prevent a provincial insurance company taking a risk on property situated outside the province. A third

thinks the phrase means that the business of the company regarded as a whole must fairly come within the description 'provincial,' because, for example, it is restricted as to its residence or place of business to one province; but that an insurance company may have power to enter into a contract of insurance abroad, or relating to property in another province, without thereby ceasing to be a company with provincial objects. Yet a fourth thinks that what is meant is 'companies to do business within the province as their territorial area,' but that while the objects and purposes of such companies must be confined to the province, things may be legally done outside the province which are strictly in furtherance of those objects or purposes, or ancillary or incidental to them; but that this does not justify a provincial insurance company insuring property outside the province. A special reference, however, to the Supreme Court is pending, the object of which is to obtain a definite determination of the respective powers of the Dominion parliament and the provincial legislatures as to the incorporation of companies.

No. 12. Solemnization of Marriage in the Province.—We need only refer as to this to what has been stated above in reference to Dominion power No. 26, 'Marriage and Divorce.'

No. 13. Property and Civil Rights in the Province.—There is no legislative power specified in the British North America Act which more forcibly illustrates, than does this provincial power, the principles already laid down in this article, that the act must be read as a whole, and that the Dominion powers enumerated in section 91 must be read as excepted out of the provincial powers enumerated in section 92, in so far as the latter might seem to include, in any degree, the former. There is probably no Dominion power enumerated in section 91 which does not, or may not, involve in its exercise property and civil rights in the provinces, either directly or by way of provisions properly ancillary to the complete exercise of the Dominion power. And as we have also already seen, where provincial legislation directly conflicts with valid Dominion legislation it will be overborne by the latter, even though otherwise *intra vires*. And even when legislating under its

general residuary power to make laws for the peace, order, and good government of Canada, upon non-provincial subjects, if its primary object and design is to preserve public order and safety, the Dominion parliament may incidentally affect and interfere with property and civil rights. These things must be borne in mind in interpreting the provincial power over property and civil rights in the province; but, subject to them, the provincial power, as we have seen, is absolutely plenary, and extends to interference with vested rights, and pending litigation, with or without compensation. But it does not extend to property and civil rights locally situated in another province, and if in any case the province cannot legislate in respect to one, without also doing so in respect to the other, in such case it cannot legislate at all.

V

A CONSTRUCTIVE FEAT OF STATESMANSHIP

WE cannot close this study without a tribute to the skill, statesmanship and patriotism which went to the making of the British North America Act. It is perhaps the greatest constructive feat which British statesmanship has ever accomplished. It is all very well to say that the Fathers of Confederation had before them the constitution of the United States. But that constitution was more likely to prove a trap to mislead than a precedent to help. As Sir Henry Maine says in his work on *Popular Government*, the constitution of the United States is in reality a version of the British constitution as it must have presented itself to an observer in the second half of the eighteenth century. It is tolerably clear, he says, that the mental operation through which the framers of the American constitution went was this: they took the king of Great Britain, went through his powers, and restrained them wherever they appeared to be excessive or unsuited to the circumstances of the United States. It is remarkable that the figure they had before them was not a generalized English king nor an abstract constitutional

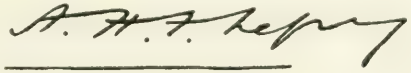
monarch; it was no anticipation of Queen Victoria, but George III whom they took for their model. The British system of cabinet government as it existed in 1867, when the British North America Act was passed, was exactly the method of government to which George III refused to submit, and the framers of the American constitution took George III's view of the kingly office for granted. They gave the whole executive government to the president, and they did not permit his ministers to have seat or speech in either branch of the legislature. They limited his power and theirs, not by any contrivance known to modern English constitutionalism, but by making the office of president terminable at intervals of four years. It may very well be that the Americans improved upon the system of government at that time existing in England, but they cribbed, cabined and confined their new scheme within the four corners of a written constitution, whereas the British system was permitted to proceed in a course of natural and spontaneous development. The third Quebec Resolution expressly declares: 'In framing a constitution for the general government, the Conference, with a view to the perpetuation of our connection with the Mother Country, and the promotion of the best interests of the people of these provinces, desire to follow the model of the British constitution, so far as our circumstances will permit.' But much water had run under the bridge since the days of George III. By 1830, but not before, the complete development of parliamentary responsible government had been reached, and the combination of this with a federal system, while maintaining undisturbed the imperial connection, was no doubt the most essential achievement of the framers of the British North America Act. But it was by no means only in this respect that they refused to be led away by the constitution of the United States from the avowed object of endowing Canada with a constitution similar in principle to that of the United Kingdom. They could not, of course, create a legislature precisely similar to the British parliament in respect to supreme control over all matters whatever in Canada, because they were bringing into existence not a legislative union, but a federal union of the provinces. But they adhered

as closely as possible to the British system in preference to that of the United States. They distributed all legislative power whatever over the internal affairs of the Dominion between the federal parliament on the one hand, and the provincial legislatures on the other. They gave both the Dominion and the provincial legislatures not merely power to do certain things and make all laws necessary and proper for carrying such powers into execution, as is the case with Congress, but power to 'make laws in relation to' the various broad subject-matters of legislation committed to their respective jurisdictions. They gave them that power in each case not as mere delegates or agents—which is the position of American legislatures—but authority as plenary and as ample within the limits prescribed as the imperial parliament in the plenitude of its power possessed or could bestow. They recognized no reserve of power either in the people of the Dominion at large, or in the people of the provinces in particular, any more than such reserve is recognized under the British constitution, although it is under the American.

Furthermore, and still adhering to British principles, the framers of the Dominion constitution made the respective powers of parliament and the provincial legislatures, not concurrent as are for the most part federal and state powers in the United States, but exclusive in each case, the one of the other, thus making the parliamentary bodies they were creating each supreme in its own domain. In framing the fundamental law of Canada they restrained their hands, and allowed as free scope as in the nature of the case was possible, for that process of organic growth of the constitution coincidently with that of the nation, which is one great virtue of the constitution of the United Kingdom. In a word, they did all that could be done by human foresight to secure to Canadians as a heritage for ever the precious forms of British liberty. Assuredly we may say that they have realized the dreams of Lord Elgin—'by creating such a country as might so fill the imagination and satisfy the aspiration of its sons, that the danger of absorption with its great neighbour might be for ever set at rest.'

Impossible it is to foresee the future growth and develop-

ment of this most favoured land; but, however great that growth and development may be, we may rest confident that the constitution of the Dominion of Canada has a power of expansion which will satisfy all its requirements; and it will be no fault of the framers of the British North America Act if Canadians do not continue, for countless generations, free, contented and prosperous, under the Union Jack.



THE FEDERAL GOVERNMENT

THE FEDERAL GOVERNMENT

IT is proposed in the following pages to set forth the system on which the government of Canada is organized; to describe this system in its actual operation; to inquire into the nature and source of the authority by which the Dominion is ruled; to ascertain by whom, under what conditions, and subject to what limitations, this authority is administered; to understand the relations in which the two great councils of the nation—the executive and the legislative—stand towards the crown and each other; to visit the various departments of state, and to see how the business of the country is carried on from day to day.

The preamble of the British North America Act, 1867, proclaims the desire of the provinces of Canada, Nova Scotia and New Brunswick to be federally united into one Dominion under the crown of Great Britain, with a constitution similar in principle to that of the United Kingdom; and in accordance with this intention the 9th section declares that the executive government and authority of and over Canada shall continue to be vested in the sovereign of Great Britain and Ireland. The king therefore is the supreme ruler of the Dominion, but, inasmuch as His Majesty is unable to be actually present in Canada, he is represented in the person of his deputy—an officer styled the governor-general—to whom is delegated the royal authority.

In view of the dignity and importance of his great office, it is fitting to begin this review by a description of the mode of appointment of the governor-general; to define with some degree of particularity his powers and functions, and to make clear his part in the actual working of the machinery of government.

The Governor-General

The governor-general of Canada is appointed by the king on the advice of the secretary of state for the Colonies, by letters patent under the great seal of the United Kingdom. Prior to 1878 it was the practice to issue new letters patent to each governor-general on appointment, but in that year letters patent were issued, making permanent provision for the office, and ordaining that all future incumbents should be appointed by special commission under the royal sign manual and signet. Accompanying the general letters patent, and bearing even date therewith, are instructions for the governor's guidance in the execution of the high trust committed to his charge. In 1905 the general letters patent and instructions issued in 1878 were revoked, and fresh instruments of the same tenor were substituted therefor, the change apparently being deemed necessary by reason of the addition to the governor-general's style and titles of the phrase 'Commander-in-Chief of the Dominion of Canada.' The letters patent and royal instructions, read in conjunction with the British North America Act, set forth the powers of the governor-general, who, it is important to remember, is not clothed with the plenary authority of the sovereign. He is not a viceroy, and can exercise only such functions as appertain to his office by law, or are delegated to him, either expressly or impliedly, by the king. Among these are the power of appointing to office all public functionaries, and of suspending or removing therefrom such as hold their positions during the pleasure of the crown; of summoning, proroguing and dissolving parliament; of exercising the prerogative of mercy by the grant of pardons or reprieves, and generally of doing all things necessary to the proper administration of his office. In the exercise of these functions he is guided by the advice of responsible ministers, who in turn must possess the confidence of the House of Commons. The doctrine of ministerial responsibility, which has now reached its full development, was of gradual growth in Canada. Thus, it is only within com-

GOVERNORS-GENERAL OF THE DOMINION OF CANADA

Viscount Monck
1867-68

Lord Lisgar
1868-72

Earl of Dufferin
1872-78

Marquis of Lorne
(Duke of Argyll)
1878-83

Marquis of Lansdowne
1883-88

Lord Stanley of Preston
(Earl of Derby)
1888-93

Earl of Aberdeen
1893-98

Earl of Minto
1898-1904

Earl Grey
1904-11

Duke of Connaught
1911

paratively recent years that the exercise of the pardoning power has been withdrawn from the individual discretion of the representative of the crown. Before 1878, while the governor-general was required (in capital cases) to consult his ministers in respect of all applications for clemency, he was not bound to follow their advice. On the contrary, he was enjoined to decide each case according to his own judgment, whether his advisers concurred or otherwise, and to act on his personal responsibility as an imperial officer. In 1878, largely through the instrumentality of Edward Blake, at that time minister of Justice in the Mackenzie cabinet, a change in this procedure was determined upon, and the royal instructions issued to the Marquis of Lorne in 1878 directed the governor-general not to pardon any criminal offender without first receiving, in capital cases, the advice of his council, and, in other cases, the advice of one, at least, of his ministers.

The prerogative of the crown as the fountain of honour, unless specially delegated, does not appertain to the governor-general. His Excellency, in his quality of an imperial officer, from time to time makes recommendations touching the bestowal of honours to the secretary of state for the Colonies, who, if he sees fit, submits them to His Majesty with his own advice. It is highly probable that as a general rule, before making such recommendations, the governor-general consults his chief adviser, and it is equally probable that the prime minister's wishes, both positive and negative, in regard to the bestowal of honours upon Canadians resident in the Dominion, possess much weight, in turn, with the governor-general, the secretary of state and the sovereign; but constitutionally, the responsibility for advice tendered in such matters rests with His Majesty's government. With this exception, and saving rare occasions in which imperial considerations are distinguished from exclusively Canadian interests, the governor-general acts only on the advice of his ministers, who are responsible for every act of the crown in relation to the public affairs of the Dominion, and to whom, so long as they are sustained by parliament, he is called upon to extend his unreserved confidence and loyal support.

While the governor-general's commission gives to him the title of commander-in-chief, and enjoins all military officers to obey him, he is not thereby personally invested with any military command, which is exercised by the governor in council, to whom, under parliament, belongs the direction and control of the armed forces of the Dominion.

The impression prevails in some quarters that under the practical working of the Canadian constitutional system the governor-general has ceased to be a living factor in the government of the country, that the office, while retaining its ceremonial attributes and social prestige, and valuable as the visible link connecting Canada with the motherland, no longer serves any useful functions that might not—to use a favourite expression of the late Professor Goldwin Smith—be equally well performed by a rubber stamp. This is a misapprehension. The governor-general, while bound to take the advice of his responsible ministers upon all questions appertaining to the government of Canada, whether it is or is not in accordance with his own opinion, possesses in a variety of ways opportunities for modifying that advice in cases in which he may consider its acceptance contrary to law or injurious to the public interest. His elevated position as the king's representative; his aloofness from the prejudices and passions of party strife; and in many instances his wider knowledge and experience of men and affairs, acquired by mingling in the larger sphere of imperial statesmanship;—all these considerations combine to render his influence upon the policy of his ministers far from negligible.

While, as has been said, the governor-general should, in all ordinary matters of administration, defer to the views of his advisers, he should do so in an intelligent manner. He is called upon to see that the authority of the crown is not used in regard to any act of government without his express sanction. It is equally his duty to examine the reports of the Privy Council submitted for his approval—to call for the fullest information, and, if necessary, explanations, in regard to all matters treated of therein. He can refer back to his ministers for reconsideration any recommendations

VICE-REGAL CONSORTS

Lady Monck

Lady Lisgar

Lady Dufferin

The Princess Louise

Lady Lansdowne

Lady Stanley

Lady Aberdeen

Lady Minto

Lady Grey

The Duchess of Connaught

made to him, and, by suggestion, exhortation and remonstrance, seek to prevail upon them to modify or abandon a policy of which he may be unable to approve. Should they persist in their advice, the governor-general, as a last resource, can demand the resignation of his ministers, or dismiss them from office, and call to his councils a new administration. Such an extreme step, however, as the dismissal of a ministry appears in Canada to be reserved to lieutenant-governors. No governor-general has ever resorted to it. When differences arise between a governor-general and his cabinet with respect to a question of public policy, it sometimes happens that fuller inquiry enables the governor-general to overcome his objections to the suggested course, or, it may be, that his representations successfully appeal to his ministers and induce them to modify or withdraw their proposals.

One would naturally be disposed to surmise that disinterested and friendly co-operation of the character indicated, on the part of a prudent and tactful governor-general, could scarcely fail to prove of distinct mutual advantage, at once to the representatives of the crown and to his advisers; and so indeed it has proved. Thus Lord Lansdowne, in his letter of farewell to Sir John Macdonald, observes: 'I have often made the reflection that the position of a Governor-General in this country is one that might be very agreeable or almost unendurable, according as his relations with his Prime Minister were or were not friendly, frank and characterized by complete trust on each side'; and several of the prime ministers of Canada have publicly acknowledged the benefits they derived from association with various governors-general whom they served, and to whose wise and prudent counsels they have declared themselves much indebted.

A governor-general is appointed during pleasure, but in the absence of any specific provision in that regard his tenure of office is limited to six years. The Colonial Office regulations are quite clear upon this point. Notwithstanding this, the practice has been, at any rate up to a comparatively recent period, to consider the term as one of five years, and any extension beyond that period as a matter of arrangement

between the secretary of state for the Colonies and the incumbent of the office.

The governor-general is empowered to appoint from time to time a deputy or deputies to act for him in the exercise of his powers. This he generally does before visiting remote portions of the Dominion, in order that public business may not suffer by reason of his absence from the seat of government. The choice is his own. As a matter of fact it generally falls on the chief justice of Canada, or failing the chief justice, on the senior available judge of the Supreme Court. Such appointment may be limited to the performance of a single official act, such as giving the royal assent to a bill, or the prorogation of parliament; or the commission may be general in its terms and may operate during pleasure. The power to dissolve the House of Commons is not usually delegated by a governor-general.

In the event of the death, incapacity, removal or absence from the country of the governor-general, it is provided in the letters patent constituting the office that his powers and functions shall, pending any appointment by the king, become vested in the chief justice of Canada for the time being, or, failing him, in the senior judge of the Supreme Court, who, upon taking the prescribed oath, becomes the administrator of the government, and is clothed with all the attributes of the office during the absence or incapacity of the governor-general.

The opinion is sometimes expressed by persons without much practical acquaintance with the conduct of public affairs, that it would more comport with the dignity and growing importance of the Dominion that a Canadian should be selected to represent His Majesty in the office of governor-general. This view is not shared by those best qualified to judge. In 1910, in his farewell eulogy of Lord Grey, Sir Wilfrid Laurier declared this feeling to be 'a laudable, but to my mind a misguided expression of national pride.' He added that the system of appointing imperial statesmen to the office, which had been in operation since Confederation, has worked well, and that any change in that system 'would not, I am sure, be productive of good results, but perhaps on

the contrary would jeopardize something which we hold dear.' [1]

The appointment of a governor-general is usually announced some months before he actually assumes office. At a convenient date he sails for Canada. He is met on landing by the administrator of the government—the retiring governor-general, as a rule, having left the Dominion before the arrival of his successor—the prime minister and the other members of the cabinet. His Excellency's commission is then publicly read. He takes the oath of office, and receives the great seal of Canada from the secretary of state, to whose hands he immediately returns it. He then signs the proclamation announcing his assumption of office, and the ceremony is over.

The Governor-General's Secretary

In former times the governor-general of Canada had two official secretaries, a civil and a military secretary. To the civil office only was a salary attached. Up to the year 1860 the civil secretary held from the imperial government a commission as superintendent-general of Indian Affairs. Since about the year 1870 the two secretaryships have usually been united in the person of a military officer, appointed military secretary by the governor-general personally, and gazetted to the civil office as well, under the title of 'Secretary and Military Secretary to his Excellency the Governor-General.' Occasionally, however, the governor-general's secretary is a civilian, and there is no military secretary.

The duties of the military secretary are purely ceremonial, and call for no extended notice here. In his quality of civil secretary he is the head of the office which deals with the governor-general's official correspondence. Original dispatches are received, entered and docketed in this office, and previous to the establishment of the department of External Affairs were distributed to the Privy Council office, or to the departments direct, as the case might be. The replies of the government in the form of minutes of the Privy

[1] Debates, House of Commons, May 3, 1910.

Council, or reports direct from individual ministers, were sent to the governor-general's office, whence they were forwarded to their destination under cover of dispatches prepared in the governor-general's office, and signed by His Excellency. Now, everything that the governor-general desires to refer to his ministers is sent direct by the governor-general's secretary to the secretary of state for External Affairs, who makes the distribution, and reports direct to the governor-general, or to the governor-general in council, as the case may be, for every department of government. Otherwise the procedure is unchanged. The government of Canada continues to communicate with the secretary of state for the Colonies, His Majesty's ambassador at Washington, and elsewhere outside Canada, through the governor-general's office, precisely as before.

The staff of the office of the governor-general's secretary, as regards appointment, promotion, etc., is under the control of the prime minister. The governor-general's private secretary, though generally holding a clerkship in the office of the governor-general's secretary, performs services altogether of a confidential and personal nature.

The Privy Council

Having described the functions of the governor-general, in whom is vested the supreme executive authority, it is now proper to consider the mode in which his powers are exercised in the administration of the affairs of the Dominion. The British North America Act provides that there shall be a council to aid and advise the governor-general, which shall be styled the King's Privy Council for Canada. The members of this council are appointed by the governor-general on the advice of his ministers, and may be removed by the same authority. Otherwise their tenure of office is for life. 'Once a Privy Councillor always a Privy Councillor' is substantially true. George III struck Charles James Fox's name from the roll of his Privy Council, and a few similar cases are recorded in the long course of English history, but, so far, none in Canada. A privy councillor takes a special oath of secrecy

and signs the council-roll in the presence of the governor-general. He receives no commission or other evidence of appointment, nor does any emolument attach to the office. The position, nevertheless, carries with it a high place in the social and official world, and is a distinction rarely bestowed on any public man other than as a necessary qualification for cabinet office. Members of the Privy Council are entitled to be styled 'Honourable,' and this for life.

The membership of the Privy Council is not limited in number. In 1912 there were sixty-nine privy councillors. Of these eighteen were in the cabinet; forty-two had held cabinet office, but were not in the ministry; eight, although never holding cabinet office, had been speakers of the Senate or of the House of Commons. The remaining member was Lord Strathcona and Mount Royal.

The Canadian Privy Council, as distinct from the cabinet, has never been called together. A fitting occasion for such an interesting ceremony would have been the death of Queen Victoria, or, again, that of King Edward VII, when the whole council might have been summoned to join with the governor-general in proclaiming the new sovereign. Such an unusual proceeding would have been eminently constitutional and proper, and would have established a precedent to be followed by future generations. Advantage, however, was not taken of the opportunity.

In theory the Privy Council is the body upon whose advice the government of the country is carried on, but it has been superseded in practice by the cabinet, to which have passed the advisory and consultative functions which in times gone by were exercised by it.

The Parliament

The parliament of Canada consists of the king, represented by the governor-general, the Senate and the House of Commons, the concurrence of all three branches being necessary to the enactment of every law. Technically each branch is equally free to give or withhold its assent at pleasure. Here, however, as in many other instances, a wide divergence

has grown up between the theory and the practice of the constitution. The crown has long ceased to use the prerogative of veto, and while the upper house may, and does on rare occasions, assert its right of rejecting a government measure sent up from the House of Commons, it employs such discretion in so doing that its action commonly has no effect upon the ministry other than that of subjecting it, perhaps, to temporary inconvenience and annoyance. On the other hand, the House of Commons, by requiring the governor-general's powers to be exercised through ministers responsible to it, has become in reality, if not in form, the source and centre of legislative authority.

No more ingenious and effective scheme for the conduct of public affairs has been devised by the wit of man than that known as 'Responsible Government,' under which the balance of the old-time contending elements in the state is harmoniously adjusted without doing violence to cherished convictions. The crown maintains unimpaired its ancient dignities and splendour, and rests far more securely upon the affections of the people than at any previous time in history; while the controlling power of government has passed to the people's representatives in the House of Commons. As a constitutional writer has well observed: 'Such is the wonderful elasticity and adaptability of our system of government, that modern life has taken possession of the ancient form and has not rent it. It has expanded with every stage of national growth, for while the ancient prerogatives still exist, they can be lawfully exercised only upon the advice and sanction of a responsible minister—a minister and a ministry responsible to the Commons House of Parliament.'

The Senate

The Senate of Canada in 1911 consisted of 87 members, of whom 24 were from Ontario, 24 from Quebec, 10 from Nova Scotia, 10 from New Brunswick, 4 from Prince Edward Island, 4 from Manitoba, 4 from Saskatchewan, 4 from Alberta, and 3 from British Columbia. Although for reasons of convenience senators are usually associated in debate, and

even elsewhere, with specific localities—generally those in which they reside—they are, with the exception of those from the Province of Quebec, appointed for their province at large, and not for any constituency or group of constituencies. In Quebec a senator is appointed for each of the twenty-four electoral divisions of Lower Canada, which in pre-Confederation days returned members to the legislative council.

The composition of the Senate was arranged with the idea of affording protection to the smaller provinces which they might not always enjoy in a house where the representation was based on numbers only. It is for this reason that the Maritime and the Western provinces have a larger proportional representation in the Senate, compared with Ontario and Quebec, than they possess in the House of Commons.

Senators are appointed by the governor-general in council on the advice of the first minister, and, subject to certain conditions, hold their places for life. It is doubtful if, as in the case of a member of the House of Commons, the acceptance of an office of emolument under the crown vacates a senator's seat, but in the circumstance of a senator being appointed to office, it is customary to require from him the resignation of his senatorship in writing.

The qualifications for the office of senator are :

1. He must have attained the age of 30 years.
2. He must be a British subject either by birth or naturalization.
3. He must be possessed of real property to the value of $4000, free from all encumbrances.
4. He must be resident in the province for which he is appointed.
5. In the case of the Province of Quebec he must either have his real property qualification in the district for which he is appointed, or be resident in that division.

A senator forfeits his seat in any of the following cases :

1. If for two consecutive sessions of parliament he fails to attend in his place.

2. If he becomes a subject or citizen of a foreign power.
3. If he becomes a bankrupt or defaulter.
4. If he is attainted of treason, felony, or of any infamous crime.
5. If he ceases to be qualified in respect of property or of residence.

A senator is entitled, as such, to the distinction of 'Honourable' so long as he holds the office, but no longer. He receives an allowance of $2500 for each session extending over thirty days, subject to a deduction of $15 a day for every day's absence. Where the session is less than thirty-one days he receives $20 for each day's attendance. He is also paid his actual travelling expenses to and from the seat of government.

The Senate has co-ordinate powers of legislation with the House of Commons, except in the case of bills involving a charge upon the Treasury, or bills imposing any tax or impost, which must originate in the lower house. The Senate can neither originate nor amend such bills, though it may reject them.

The speaker of the Senate is appointed by commission under the great seal and holds office during pleasure. Except in name this office presents little analogy with that of speaker of the House of Commons, who almost ostentatiously stands aloof from all questions of party politics. The speaker of the Senate, on the other hand, is frankly ministerialist, sometimes a member of the cabinet, and necessarily a supporter of the administration of the day.

In common with his brother senators the speaker has a vote in all cases, and when the votes are equal the decision is deemed to be in the negative. Though he seldom exercises the privilege, the speaker may join in debate, in which event he comes down from the chair and speaks from the floor uncovered. He receives in salary and allowances about $6000 per session in addition to his indemnity as a senator, and is provided with handsome quarters in the parliament buildings.

The functions of the speaker are limited, being virtually confined to presiding over the deliberations of the Senate.

He decides questions of order, subject to an appeal to the Senate. The members do not address the speaker in debate, but speak to the house at large. Except in certain cases arising under the Civil Service Act of 1908 and its amendments no patronage appertains to his office.

It is contrary to usage of either house of parliament to mention in debate the other chamber by name. Thus a senator wishing to allude to something that has happened in the House of Commons will refer to the incident as having occurred in 'another place.' Conversely, the same practice prevails in the House of Commons.

The chief officers of the Senate are the clerk, the clerk assistant, the law clerk, the gentleman usher of the Black Rod, and the sergeant-at-arms.

The clerk records the proceedings of the Senate in the form of minutes, and generally performs the duties suggested by his office. He administers the necessary oaths to newly appointed senators, pronounces the royal assent to bills at the appointed ceremony in that behalf, or announces their reservation. He also acts as cashier.

The clerk of the Senate is also styled the 'Clerk of the Parliaments,' and, as such, is the custodian of the original acts of the legislatures of Upper and Lower Canada, of the late Province of Canada, and of the Dominion of Canada.

The gentleman usher of the Black Rod is the ceremonial officer of parliament. He has the direction of the arrangements for the opening and closing of parliament, bears the governor-general's messages to the House of Commons to attend His Excellency in the Senate, and performs other formal offices.

The sergeant-at-arms attends the speaker with the mace at the daily opening and adjournment of the house, and on all state occasions; maintains order and decorum in the chamber, galleries and lobbies during the sittings of the Senate, and generally is responsible for the carrying out of the speaker's orders. He likewise keeps and certifies a list of senators present at each sitting, as does also the gentleman usher of the Black Rod.

The clerk of the Senate, the sergeant-at-arms and the

gentleman usher of the Black Rod are appointed by the governor in council and hold office during pleasure. The clerk assistant, law clerk, translators, and other officers and clerks are appointed by the Senate on the recommendation of the Committee of Internal Economy and Contingent Accounts, of which the speaker is not even a member. The clerk and the clerk assistant ordinarily sit at the table during the sessions of the house, as on special occasions do the law clerk and the clerk of the crown in Chancery. The sergeant-at-arms and the gentleman usher of the Black Rod also have seats on the floor.

Divorce is granted by the parliament of Canada in the form of a private bill in each case, which goes through all the stages in both houses exactly as any other private bill.[1] Bills of this nature originate in the Senate, the petition being referred to the Standing Committee on Divorce, which examines witnesses, and after due inquiry into, and consideration of, all the circumstances of each individual case, makes its report to the house. Applications for divorce are received from residents in the Provinces of Ontario, Quebec, Manitoba, Saskatchewan and Alberta only, the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and British Columbia having divorce courts of their own.

Divorces are granted by parliament only after the establishment to the satisfaction of the Senate committee of charges which include adultery. In this respect wives are on an equal footing with husbands, the adultery of either being held sufficient to warrant the dissolution of the bond. In the forty-five years which have elapsed since Confederation the parliament of Canada has granted one hundred and sixty divorces, an average of less than four a year.

The Senate holds its sittings and regulates its adjournments within a session, at pleasure, but prorogation terminates its proceedings until parliament is again summoned by the crown. In former days there was occasional conflict between the two houses, the legislative council of the Province of Canada once going to the length of throwing out the Supply

[1] Previous to the session of 1879 divorce bills were reserved for the signification of the royal pleasure, in conformity with the governor-general's instructions.

Bill; and since Confederation the Senate has rejected three or four important government measures; but within recent years acute differences have been rare, the upper house for the most part being content to follow the lead of the Commons. This arises, in part at least, from a uniformity of political complexion, which, in turn, is to be ascribed to the long continuance of one party in power. When the conservatives went out in 1896, after having enjoyed uninterruptedly eighteen years of office, there were not more than a dozen liberal senators. In 1911, after fifteen years of liberal rule, the position of parties in the Senate was almost reversed.

It cannot be denied that the Senate has not fulfilled the expectation of its founders, who proposed to themselves an independent body, exercising a moderating and restraining influence upon the legislation of the country. Such an influence is universally admitted to be advantageous, yet more and more the Commons seems to absorb all rule and authority and power, at the expense of the Senate, which correspondingly suffers in prestige. This surely is not to the advantage of the state. Various remedies have been suggested. The mode of appointment is commonly criticized, many holding that the Senate would be more influential if its members were elected instead of being, as now, nominated by the prime minister. More influential it might be—it certainly would be more partisan; and, when it contained a majority opposed to the government of the day, it would be more contentious and less amenable to those moderating counsels which generally govern therein, even when a majority of its members are unfriendly to the party in power. Others there are who consider that the remedy lies with the executive. In 1912 only one cabinet minister sat in the Senate, the other seventeen being in the Commons. It is rare indeed for a government measure to be introduced in the upper house. The consequence is that for more than half the time the Senate has nothing to do.

This is not owing to any lack of legislative capacity, for it is a recognized fact that the standing special committees of the Senate devote more pains to, and deal more satisfactorily with, the bills referred to them than do those of the

Commons. While it is no doubt expedient that the prime minister, the minister of Finance and the heads of the large spending departments should be in the Commons, there does not seem to be any reason why the minister of Justice, the secretary of state, the minister of Agriculture and the postmaster-general, or some of them, might not, with advantage to the public service, sit in the upper house. If there were three cabinet portfolios in the Senate, and if a reasonable proportion of government measures was initiated therein, it is the view of some that the Senate would recover much of its old-time importance, and take that place in the administration of the country's affairs which it was originally intended it should fill.

The House of Commons

The business of the great council of the nation, which we call parliament, is not confined to the making of laws, but includes the consideration of all matters of public concern. Parliament may advise the crown on subjects of general policy. It possesses the right of inquiry into all acts of administration by the ministers to whom it has entrusted the management of the country's affairs. It regulates taxation, and provides money for the requirements of the public service. In respect of the two last-named functions the House of Commons has the exclusive initiative, and in all others a preponderating influence.

Parliament is called together by the governor-general, who, on the advice of his ministers, issues a proclamation summoning both houses to assemble on a day appointed by him. No date is fixed by the constitution for the meeting of parliament, the only limitation being that twelve months must not intervene between the last sitting in one session and the first sitting in the next session.

For a long time parliament used to meet early in February. Some years ago the date was changed to November, in the expectation of thereby avoiding summer sessions—an expectation not always realized. As a rule the sessions are not less

than six months in length, and there does not seem any prospect that they may become shorter.

On the occasion of the opening of the first session of a new parliament the members assemble at Ottawa, and take the oath of allegiance before commissioners appointed for that purpose. At the appointed hour the governor-general, either in person or by deputy, proceeds to the Senate chamber and takes his seat upon the throne (the deputy governor sits in a chair at the foot of the throne). The speaker of the Senate, being commanded in that behalf, directs the gentleman usher of the Black Rod to acquaint the House of Commons of the governor-general's pleasure that they attend him in the chamber of the Senate, whereupon they all troop up and stand in studied disorder outside the bar. The speaker of the Senate then informs them that His Excellency the governor-general does not see fit to declare his reasons for summoning the present parliament until a speaker of the House of Commons is elected according to law, whereupon they withdraw to their own house, where the leader of the government, addressing himself to the clerk (who, standing up, points to him with outstretched finger in silence, and then sits down), proposes (seconded by a cabinet minister) that Mr. A. B. do take the chair as speaker. It is open to any two members to propose and second any other member for the office, in which case the house makes its selection by vote. When the result is declared, the proposer and seconder of the successful candidate conduct him to the chair, whence he returns his humble acknowledgment to the house for the honour done him, and sits down. The mace, the symbol of authority, which before lay under the table, is then laid upon the table.

Next day the governor-general again comes down to parliament, this time in person and in full state. He takes his seat upon the throne. Again Black Rod is dispatched on his mission to the Commons, who arrive with the speaker-elect at their head, preceded by the sergeant-at-arms bearing the mace. Standing outside the bar, the speaker-elect makes a reverence to the throne, and in historic phrase acquaints His Excellency that the House of Commons has elected him

its speaker, despite his unfitness for the office, and at the same time claims, on behalf of the Commons, freedom of speech, and access to His Excellency's person at all seasonable times. He does not, as in England and in some Canadian provinces, seek the royal approval of his election. The governor-general, having, through the speaker of the Senate, confirmed the Commons in the exercise of all their constitutional privileges, proceeds to read his speech both in English and French, after which the Commons withdraw. Upon reaching their own chamber the speaker recounts what happened in the Senate up to the reading of the speech, of which, he says, 'to prevent mistakes' he has obtained a copy. The leader of the house then asks leave to introduce a bill generally styled 'An Act respecting the administration of Oaths of Office,' which is read a first time and never heard of again. In fact, there is no such bill. The form is gone through at the beginning of each session to assert the right of the Commons to proceed to business before considering the speech from the throne, which is then read. On a day fixed for its consideration a private member, by arrangement, moves an address of thanks to the governor-general for his gracious speech, which is duly seconded, and affords the first test of the government's popularity. Should the numerical strength of parties in the house be anything like equal, it is customary for the opposition to move an amendment to this motion, censuring the government for some act of commission or omission, or simply declaring that they do not possess the confidence of the house. If such an amendment carries, the ministry must resign, and the governor-general 'sends for' the leader of the opposition. An adverse vote on the speakership is not necessarily regarded as a vote of want of confidence, because, while the leader of the government generally proposes the speaker, he does so in his capacity as leader of the house rather than of the government. In England the speaker is no longer regarded as the nominee of a party, and is always proposed and seconded by unofficial members.

Parliamentary procedure is too elaborate and intricate a subject to be gone into at any length here. It may be well,

however, briefly to note a few points of interest connected with the conduct of business in the House of Commons.

He who has witnessed for any length of time the governmental system of Canada in actual operation cannot fail to have marked the strength of party discipline, and particularly the control exercised by the administration over its parliamentary following. This, perhaps, is to be ascribed to a concurrence of more or less favouring conditions. In the parliament of Canada there are only two parties, and the division between them is clear cut. 'Groups' are unknown. There is no organized labour or socialistic vote to harass the ministry. Majority and minority are alike homogeneous. Then, too, since Confederation successive administrations have possessed ample majorities in parliament, and it may be added that, for by far the larger portion of the time, each side in turn has enjoyed the immense advantage of a singularly magnetic leader, whose commanding personality has evoked the respect and devotion of his entire following.

This manifestation of party discipline—lack of independence it is sometimes called—has at least the advantage of imparting an element of permanence and stability to Canadian institutions, the lack of which is a misfortune to more than one popular assembly in the world.

The rules of parliament assign two days (Tuesday and Friday) in each week to government business. Before the session is very far advanced the leader of the house moves that for the remainder of the session government orders have precedence on Thursdays. A few weeks later he takes Wednesdays by the same process; then Mondays. Last of all he appropriates Saturdays, and so has them all.

A great deal of the work of the House of Commons, including all private legislation, is performed in the standing committees which are struck at the beginning of each session. By arrangement between the leaders, both political parties are represented on these committees in somewhat the same numerical proportion that they occupy on the floor of the house.

A private member may introduce a public bill, by which is meant a bill dealing with matters of a public nature, but

unless he does so at an early period of the session, there is not much chance of its reaching a third reading, unless he can persuade the ministry to transfer it to government orders.

Money bills (*i.e.* measures involving a charge upon the people) can be proposed only by a member of the government, who must announce, when moving the house into committee of the whole to consider the resolution upon which a bill of this nature is founded, that the governor-general is acquainted with the subject-matter of the resolution and recommends it to the house.

Lined up in battle array, the two political parties confront one another on the floor of parliament, with the speaker as umpire, each vigilant to detect and take advantage of any opportunity that may present itself to score against its adversary. The chief onslaughts of the opposition are made when the minister of Finance moves that the speaker leave the chair and the house go into committee ' to consider of the supply to be granted to His Majesty.' In conformity with the old rule that redress of grievances must precede supply, such occasions afford the most favourable opportunity for assailing the ministry. It is then open to the opposition to move an amendment against any portion of the government's policy, censuring the ministers for what they have done or left undone. Each time the minister moves the house into committee of supply, a fresh amendment may be moved. Such amendments constitute votes of want of confidence, and, if carried, entail the resignation of the government.

To ensure the regular attendance of their supporters, each side has several ' whips ' (*i.e.* aides-de-camp to the leader of the government and of the opposition respectively), whose principal duty it is to see that the members under their surveillance are in their places when the division bells ring, steadfast in their allegiance, or, to adopt the shibboleth of party, prepared to ' vote right.' The whips, who are of course members of the house, perform services of the highest importance from a party point of view—services which one is tempted to think cannot always conduce to their personal popularity. They are supposed to know where every member of their party is at any time, and sometimes appear—no

doubt involuntarily—in the rôle of disturbers of convivial gatherings. In important debates they arrange the order of speakers, pair members who cannot be present at a division, and in other ways contribute to the amenities of political warfare. It is true, indeed, that one does not hear much of them; in this respect they resemble 'the engineers of a big transatlantic steamer whom the passengers never see, but on whose ability, skill and resource the safety of the mighty vessel largely depends.' [1]

Though very real personages, the whips are quite unknown to the forms of parliament. Nor do the journals of the house contain any reference to another reality, that mysterious body known as the 'caucus,' of whose proceedings, though veiled in secrecy, vague rumours occasionally reach the press. The caucus, in its simplest form, is the aggregate of the supporters of the government or of the opposition in both houses. From time to time the members of either party meet together, to discuss with their leaders questions of policy, to take counsel of one another, to agree on a common course of action upon occasions of emergency. Such a meeting is a 'caucus.' The chairman of the caucus is always a private member, generally an old party war-horse of approved fidelity and worth.

Ministerial caucuses are summoned by the whips at the instance of the prime minister; those of the opposition at their leader's call. No member of either house is supposed to attend the caucus unless he receives a notice from the whips to this effect, and stringent precautions are sometimes taken to see that this rule is observed.

Politics play so large a part in the real life of the House of Commons that it is somewhat amusing to be told that officially the house knows nothing of party strife. Its journals contain no allusion to political divisions, and in the statutes (with one incidental exception in recent years) [2] they are equally unknown. This was illustrated in the

[1] *The Book of Parliament*, by Michael MacDonagh, pp. 307-8.

[2] The 39th section of 'An Act respecting the Senate and House of Commons' (R. S. C., cap. 10) provides that 'To the member occupying the recognized position of leader of the Opposition in the House of Commons there shall be paid an additional sessional allowance of seven thousand dollars.'

imperial parliament not long since, when A. J. Balfour, then leader of the opposition, wishing to refer to his following, spoke of them, not directly as an opposition under his leadership, but as 'gentlemen who usually act with me.'

The office of speaker of the House of Commons is one of great dignity and importance. He is the mouthpiece of the house. He puts all motions and announces the result of votes. In the chair he controls the deliberations of the assembly and enforces his rulings. He is the judge of all questions of order, subject to an appeal to the house. He interprets the rules of debate. He reprimands members when necessary, and in cases of grossly disorderly conduct may 'name' a member, which involves the immediate withdrawal of the offender.

The speaker cannot join in debate while presiding over the house, though in committee of the whole he may give expression to his views—a privilege of which he rarely avails himself. Sometimes, however, he may find it necessary to explain certain matters connected with the management of the affairs of the house, or to represent the views of his constituents. The speaker has a casting vote in the event of a tie, but not otherwise. While in such a contingency he is free to vote as he pleases, the etiquette of the occasion requires that he shall so vote as not to preclude further consideration of the subject by the house.

The business affairs of the House of Commons are regulated by a board styled the Commissioners of Internal Economy, composed of the speaker and four members of the Privy Council, being at the same time members of the House of Commons, appointed by the governor-general. These commissioners form an advisory board to assist the speaker in regard to appointments, promotions, increases of salary, superannuation, and contingent expenses of the house.

An officer styled the chairman of committees, whose duty it is to preside over all committees of the whole house, is elected at the first session of each parliament for the life of the parliament. By the Act R. S. C., 1906, cap. 13, whenever the speaker of the House of Commons, through illness

or any other cause, finds it necessary to leave the chair, he may call upon the chairman of committees, or, in his absence, any member of the house, to take the chair and act as deputy speaker during the remainder of such day, unless he himself resumes the chair before the close of the sittings for that day.

Whenever the house is informed by the clerk at the table of the unavoidable absence of the speaker, the chairman of committees, if present, takes the chair, performs the duties and exercises the authority of speaker in relation to all the proceedings of the house, until the meeting of the house on the next sitting day, and so on from day to day until the house otherwise orders. Should the house adjourn for more than twenty-four hours, the deputy speaker continues to perform the duties and exercise the authority of speaker for twenty-four hours only, after such adjournment.

The salary of the deputy speaker is $2000, voted each session, in addition to his indemnity as member.

The speaker at a dissolution of parliament is deemed for purposes of administration to be the speaker until his successor is chosen by the new parliament.

The chief officers of the House of Commons are the clerk, the sergeant-at-arms, the law clerk and the clerk assistant. The clerk and the sergeant-at-arms are appointed by commission under the great seal, and hold office during the pleasure of the crown. The clerk assistant, the law clerk, and the chief clerks at the head of the various branches, as well as the other members of the staff, including the clerks of committee, are appointed by the speaker.

The clerk sits at the table (as does also his assistant). He is supposed to prepare the daily record of the proceedings of the house, which is called the 'Votes and Proceedings,' though this work is now done under his responsibility by a special officer. The clerk has the custody of all papers of the house, and generally assists the speaker. The clerk assistant reads whatever requires to be read to the house, calls out the names of the members when a division is being taken, and reads the titles of all bills.

The sergeant-at-arms occupies a special seat near the bar. He attends the speaker with the mace, carries out the

orders of the house, arrests all persons ordered to be taken into custody, and is responsible for their safe keeping; he preserves order in the precincts of the house, and exercises a general supervision over the messenger service.

The clerk of the crown in Chancery, though appointed by commission under the great seal, and consequently a crown officer, is, in some respects, an officer of parliament as well. He issues writs for elections of members of the House of Commons, and at the opening of the first session of a new parliament is present at the table of that house, where he hands the clerk the roll containing the names of the members elected to serve. He also attends in the Senate chamber at the ceremony of giving the royal assent, and from his place at the table reads the titles of the bills about to become law. Proclamations summoning, proroguing and dissolving parliament, though issued under the great seal, emanate, by command, from the office of the clerk of the crown in Chancery; and until recent years writs of summons, addressed to senators, now attested by the secretary of state of Canada, were signed by him.

No system of closure or other impediment to the freedom of debate exists in the parliament of Canada. Every member, provided he conforms to the rules, may speak to a motion without any limitation of time. Upon rare occasions of persistent obstruction, mutterings are sometimes heard of the necessity for the introduction of some such restriction, but the privilege of free speech remains uncurtailed.

The House of Commons consisted in 1912 of 221 members, of whom Ontario sent 86, Quebec 65, Nova Scotia 18, New Brunswick 13, Manitoba 10, Saskatchewan 10, British Columbia 7, Alberta 7, Prince Edward Island 4, Yukon Territory 1. The representation is directly proportional to population, and is based on that of Quebec. After every census the population of Quebec is divided by sixty-five, and the quotient forms the unit of representation in the other provinces. The members are elected under the provincial franchises. No property qualification is required, but a member must have attained the age of twenty-one years and be a British subject by birth or naturalization.

When a bill passes both houses it is examined by the minister of Justice, who submits it to the governor-general, with a certificate to the effect that in his opinion there exists no objection to the royal assent being given thereto, whereupon the governor-general writes on each bill the words, 'I assent to this Bill in His Majesty's name,' and signs it. At the ceremony of prorogation the clerk of the crown in Chancery reads the titles of all the bills passed during the session, after which the clerk of the Senate announces that 'In His Majesty's name His Excellency the Governor-General doth assent to these Bills.'

In the case of the Supply Bill the procedure is somewhat varied. This important measure is presented by the speaker of the House of Commons in the following words :

> May it please Your Excellency :
> The Commons of Canada have voted the supplies required to enable the Government to defray the expenses of the public service. In the name of the Commons I present to Your Excellency a bill intituled 'An Act for granting to His Majesty certain sums of money for the public service of the financial year, . . . to which Bill I humbly request Your Excellency's assent.

The royal assent is then pronounced by the clerk of the Senate in these quaint words :

> In His Majesty's name His Excellency the Governor-General thanks his loyal subjects, accepts their benevolence, and assents to this Bill.

The original acts are then confided to the custody of the clerk of the parliaments.

By the British North America Act, 1867, the governor-general, with reference to bills passed by the houses of parliament, is directed to declare according to his discretion, but subject to the laws and to the royal instructions, either that he assents to a bill in the king's name, or that he withholds the king's assent, or that he reserves the bill for the signification of His Majesty's pleasure. Previous to 1878 the governor-general's instructions forbade him to give the royal assent to

1. Any Bill for the divorce of persons joined together in holy matrimony.

2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to yourself.

3. Any Bill whereby any paper or other currency may be made a legal tender, except the coin of the realm or other gold or silver coin.

4. Any Bill imposing differential duties.

5. Any Bill, the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty.

6. Any Bill interfering with the discipline or control of Our forces in Our said Dominion by land and sea.

7. Any Bill of an extraordinary nature and importance whereby Our prerogative, or the rights and property of Our subjects not residing in Our said Dominion, or the trade and shipping of the United Kingdom and its dependencies may be prejudiced.

8. Any Bill containing provisions to which Our assent has been once refused, or which has been disallowed by Us :

Unless such Bill shall contain a clause suspending the operation of such Bill until the signification in Our said Dominion of Our pleasure thereupon, or unless you shall have satisfied yourself that an urgent necessity exists, requiring that such Bill be brought into immediate operation, in which case you are authorized to assent in Our name to such Bill, unless the same shall be repugnant to the law of England or inconsistent with any obligations imposed on Us by Treaty. But you are to transmit to Us by the earliest opportunity the Bill so assented to, together with your reasons for assenting thereto.

When the governor's instructions were revised in 1878, under circumstances already set forth in this article, all directions respecting the reservation of bills for the signification of the royal pleasure were omitted, and since that date the number of reservations has been very small. There are no instances on record of a governor-general of Canada *withholding* the royal assent, as distinguished from reserving a bill for the signification of the sovereign's pleasure.

When a bill is to be reserved, the practice is that immediately after the royal assent has been given to the other measures passed during the session, but before the Supply Bill

is assented to, the clerk of the crown in Chancery reads the title of the offending measure, whereupon the clerk of the Senate announces that 'His Excellency the Governor-General doth reserve this Bill for the signification of His Majesty's pleasure thereon,' and the measure remains inoperative until the royal assent is announced by proclamation of the governor-general in the *Canada Gazette*.[1]

Acts of the parliaments of Canada are subject to disallowance by the king in council at any time within two years of the receipt thereof by one of His Majesty's principal secretaries of state. An instance of the exercise of this power before Confederation is afforded by the disallowance, in 1847, of the act of the Province of Canada (10-11 Vict. cap. 43) for the incorporation of the town of Bytown (now Ottawa). Only one act of the Dominion parliament has suffered this fate—33 Vict. cap. 14, commonly known as the Oaths Bill, which was disallowed in 1873 as being *ultra vires* of the parliament of Canada.

The House of Commons may last for five years from the date of the return of the writs summoning it, but is subject to earlier dissolution by the governor-general. The prerogative of dissolution is virtually vested in the prime minister, a power which adds enormously to his authority and prestige. This is not to say that a governor-general is bound automatically to grant a dissolution in the case of, say, a newly elected parliament, at the mere caprice of his chief adviser. As the guardian of the prerogative, it is at once his right and his duty to require a reason justifying its exceptional exercise, and no prime minister would lightly expose himself to the risk of refusal by advising a course in defiance of constitutional precedent. At the same time the constitution is flexible, and when the expediency of a dissolution is manifest the reasons for granting it are seldom wanting.

The form in which advice is tendered to the governor-general will be explained later. Let it suffice to say here that when a prime minister has decided to dissolve, he causes a

[1] On June 2, 1886, 'An Act further to amend the Act respecting fishing by foreign vessels' was reserved for Her Majesty's pleasure. The royal assent thereto was given on November 26, 1886, and the fact was announced by proclamation dated December 24, 1886.

minute of council to be passed recommending the issue of a proclamation dissolving the existing House of Commons, and calling a new parliament to meet on a certain day. The minute submits the date of the writs, the date of nomination, and the date of the return of the writs. On the approval of the governor-general being given the proclamation issues accordingly. Another minute is passed recommending the appointment of the returning officers, which when approved is sent to the clerk of the crown in Chancery, who thereupon dispatches the writs with all speed, together with the requisite copies of the necessary proclamation to be posted up in each constituency, ballot-papers, ballot-boxes, and the whole paraphernalia of an election. When the polling is over the returning officer endorses the result upon the writ and returns it to the clerk of the crown in Chancery, who gazettes the new member.

In recent times there has been much public discussion of mandates and pledges and referendums. The unwritten portion of the Canadian constitution is anything but fixed. A constant development seems to be in progress. Perhaps in the course of evolution the day may arrive when a member of parliament will no longer be a representative, but merely a delegate, a sort of telephone through which his constituents will convey their wishes to the government of the day. So far, however, the parliament of Canada has proceeded on the ancient lines of the British constitution, under which a member represents not merely his own constituency but the whole country, and is sent to parliament to act according to his best judgment in the interest of his constituents. These should look up to him for guidance, not he to them, like the French revolutionist who pleaded in excuse for his excesses: 'Had I not to follow them? Was I not their leader?'

The mandate theory has never been applied in Canada. The Reciprocity Treaty of 1854 was negotiated in the last days of an expiring parliament. Confederation was agreed to in March 1865 by a legislature elected nearly two years before on quite different issues. The North-West Territories were acquired, the Canadian Pacific Railway contract was

entered into, and the Transcontinental Railway was built on the authority of parliaments elected to administer the affairs of Canada, but without any mandate in respect of these particular policies. Apart from the enormous expense and difficulty involved in appealing to the people on every occasion where a policy which did not happen to have been under discussion at the preceding general election is proposed by the government, it is not easy to see how such a system could work in practice, without changing the whole character and functions of parliament.

Should a ministry suffer defeat at the polls by a decisive majority, it is customary for it to resign without waiting for an adverse vote in parliament, notwithstanding that it is only through the House of Commons that the will of the people can be constitutionally expressed. This procedure, dictated by reasons of convenience, was inaugurated by Disraeli in 1868 and, though pronounced at the time to be an 'unusual course,' has since been followed both in England and in Canada, the defeated ministry remaining in office only long enough to complete unfinished business and to set its affairs in order. The length of the interval between the date of polling and the resignation, though dependent upon circumstances, does not ordinarily extend beyond three weeks.[1] Should, however, the result of the elections be inconclusive, ministers, even though there may appear to be a small majority against them, are justified in holding office until they learn their fate from a vote of the House of Commons. In such a contingency the new parliament should be summoned without delay.

The propriety of a ministry which has suffered defeat at the polls advising appointments before going out of office has been a question of periodical interest in recent years. Until 1878 it seems to have been the recognized practice for an outgoing government to fill vacancies existing on the day of polling. The Mackenzie administration was overthrown on

[1] The Mackenzie government, defeated at the polls on September 17, 1878, remained in office until October 16; but Sir Charles Tupper, defeated on June 23, 1896, resigned on July 8, and Sir Wilfrid Laurier, defeated on September 21, 1911, resigned on October 6.

September 17 of that year. Yet between that date and the swearing in of his successor, Mackenzie appointed a Supreme Court judge, a judge of the Superior Court of Lower Canada, and filled other important vacancies then existing, both in the inside and outside service, as a matter of course. His action provoked no adverse comment. Upon the defeat of Sir Charles Tupper in 1896 the governor-general of the day (Lord Aberdeen) refused to allow certain judgeships and senatorships to be filled, on the ground that his advisers had lost the confidence of the people. This precedent was accepted by the Laurier government in 1911, and apparently commends itself to popular opinion. Nevertheless, the practice of allowing a defeated ministry to fill up vacancies seems more conformable, at once to the best traditions of English public life, and to those chivalrous instincts which in all civilized, and some uncivilized, communities prompt generous treatment of a fallen foe.

The Cabinet

The cabinet is in name and in fact a committee of the Privy Council, selected by the prime minister from among those councillors who possess the confidence of the House of Commons. It is also in a real and true sense, as Bagehot well says, 'a board of control chosen by the legislature out of persons whom it trusts and knows, to rule the nation. . . . A combining committee—a hyphen which joins—a buckle which fastens the legislative part of the state to the executive part of the state. In its origin it belongs to the one, in its functions it belongs to the other.'

As will be inferred from the foregoing, a cabinet minister must possess a seat in one or other branch of the legislature—not necessarily on appointment, but within a convenient period thereafter. If not actually a privy councillor, he must be sworn of that body as a condition precedent to his entry into the cabinet, for it is from the ranks of the Privy Council that cabinet ministers are drawn. In law the Privy Council remains the advisory body—the cabinet is unknown. It is undoubtedly a singular fact that this body, all-powerful under

the British system of government, should have no legal existence. The cabinet is never mentioned in any act of parliament. It keeps no record of its own proceedings, or even of its meetings, which are secret. No secretary or clerk is present thereat. Its number is not fixed. The names of its members are not to be found collectively in any public document. They are not even officially announced, save by the prime minister, verbally on the floor of parliament, and then, it may be, months after the cabinet has been formed. Should the life of a ministry lie wholly within a parliamentary recess, that is to say, should the new cabinet never have met parliament, its composition might not be officially known at all. No formalities attend admission into its ranks, nor is any oath taken by a member of the cabinet as such.

The function of the cabinet is to advise the governor-general in all matters appertaining to the carrying on of the government. To this end its members meet together and deliberate upon affairs of state calling for consideration and action. Questions are freely discussed at cabinet meetings, and, in cases of pronounced differences of opinion, are sometimes decided by vote; but once a line of policy is agreed upon, whether by general assent, by the rule of the majority, or by the dominating influence of the prime minister, all the members are equally responsible for the decisions arrived at, and are equally bound to support and defend them or resign.

There is not a fixed number of cabinet ministers. The first Dominion ministry contained thirteen members, and this number has never been greatly departed from. In 1912 there were fifteen portfolios, held by the president of the Privy Council, the ministers of Finance, Justice, Public Works, Railways and Canals, Customs, Inland Revenue (who is also minister of Mines), Marine and Fisheries (who is also minister of the Naval Service), Militia and Defence, Agriculture, the Interior (who is also the superintendent-general of Indian Affairs), Trade and Commerce, Labour, the secretary of state of Canada (who is also secretary of state for External Affairs, and presides over the department of the King's Printer), and the postmaster-general.

In the formation of a cabinet, among many practical

considerations to be borne in mind, care must be taken to see that the various geographical and racial divisions of the Dominion are represented, with some regard to their relative importance. Thus, at present (1912), Ontario has 7 members, Quebec 5, the Maritime Provinces 2, the Prairie Provinces 3, and British Columbia 1, but there is no fixed rule in the matter, and it is to be hoped that Canadians will soon outgrow the parochial spirit which, by insisting upon such provincial limitations, hampers the choice of the prime minister.

While the heads of public departments of the government of Canada are always cabinet ministers, it is well to remember that the cabinet minister, who is at the same time head of a department, occupies a dual position. He is an adviser of the crown. As such he receives no formal appointment. He takes no oath of office, is paid no salary, and his tenure is wholly dependent upon the prime minister. But, in addition to this, he is head of a department of government. As such he fills a public office to which he is appointed by commission under the great seal. He receives a salary for the discharge of duties which he takes an oath to perform. This office he holds, irrespective of the life of the prime minister of the cabinet, until he resigns or is superseded. Thus it is that after the dissolution of a cabinet by the prime minister's death or resignation, the heads of departments continue to perform ministerial functions until their successors are appointed.

A cabinet may contain one or more members who hold no ministerial office. These are called ministers without portfolio. They are simply members of the Privy Council in respect of whom the prime mnister has directed the clerk to send a notice of the cabinet meetings. Without further ceremony they attend. Such members have the same status and voice at cabinet meetings as the holders of portfolios.

The solicitor-general is a member of the ministry, but not of the cabinet. He is not necessarily a privy councillor, and is therefore not an adviser of the crown.

Though adhering to the British constitutional principle which requires every act of the crown to be performed on the advice of responsible ministers, the Canadian practice has not maintained that distinction between the cabinet and the

Privy Council which exists in England. There the cabinet assembles informally to advise the sovereign on matters of public policy, not to perform any ministerial act. Its meetings are quite distinct from those of the Privy Council, which are held for the transaction of the business of state, such as the issue of proclamations, orders-in-council bringing statutory provisions into effect, and other formal acts of government, for it is only through privy councillors that the crown can do anything. A Privy Council may be composed of three or more councillors—not necessarily cabinet ministers—drawn from members of the government, the great officers of state, or other members of His Majesty's household, and members of either house of parliament in political sympathy with the government. Its function is to carry into effect advice given to the sovereign by the cabinet, or to discharge duties imposed upon it by statute. The king is never present at cabinet meetings. His Majesty, however, frequently presides at Privy Councils. On extraordinary occasions a full meeting of the Privy Council is convened, with the sovereign in the chair, to which every privy councillor is summoned (on the advice of the cabinet), but this ceremony is very rare.

Canada has in actual practice combined the functions of these two bodies. The cabinet stands in the same advisory and consultative relation to the governor-general in respect of general questions of policy as the English cabinet occupies towards the sovereign. It sits also, at the same time, as a committee of the Privy Council, and as such transacts a vast amount of administrative business which in England is dealt with through the Privy Council, or departmentally by individual ministers. This is indeed its principal function.

The business dealt with by the cabinet in its executive capacity is of the most varied character, and includes practically every act of importance pertaining to the administration of the military, naval, financial and postal services—the regulation of matters relating to trade and commerce ; navigation and shipping ; the fisheries, Dominion lands, Indians ; the letting of contracts for public works ; the approval of railway plans and specifications ; appointments to office of all ranks and degrees, from a lieutenant-governor to a tide-waiter ;

external affairs, the civil service, and a host of other matters, many of which, one is tempted to think, might with advantage be dealt with departmentally.

In all these matters the cabinet acts only in an advisory capacity. It is the governor-general's approval that makes the cabinet's recommendations effective.

Cabinet meetings are summoned by the clerk of the Privy Council, who notifies each minister in the following terms :

> SIR,
> I am directed to request you to attend a meeting of the Committee of the Privy Council to be held to-day at . . . o'clock.

Four ministers are considered necessary to form a quorum for a cabinet council. In pre-Confederation days the governor-general was enjoined by his instructions not to permit his council to proceed to business unless one-third of the members were present. In the instructions issued to Lord Dufferin in 1872 the one-third was changed to four members. When the governor-general's commission and instructions were revised in 1878 in the manner already explained, all reference to a quorum was omitted, but the tradition requiring four members has endured till the present day.

The governor-general never attends the deliberations of his cabinet, though he has been known formally to preside at a council summoned for the performance of a ceremonial act, such, for example, as the first meeting with his ministers, or the swearing in of a privy councillor.

THE PRIME MINISTER

The leading personage in the government unquestionably is the prime minister—the choice at once of the governor-general and of the people, and the principal intermediary between the two. As chief adviser of the crown, it is he who moulds and directs the policy of the administration. To him belongs the right of choosing his colleagues, subject to the approbation of the governor-general. He can at any time call for the resignation of any minister, and his withdrawal

from office carries with it the dissolution of the cabinet. The decisions of the ministry on questions of public policy are communicated to the governor-general by the prime minister, who is the spokesman for the cabinet, and upon whom rests in a very special degree the responsibility for advice tendered to the sovereign's representative.

While thus influential in the councils of the crown, the prime minister is at the same time the acknowledged chief of the dominant party in parliament, and is thus entitled to speak in the name of the whole nation. Yet, strange as it may appear, this office, which unites in itself the authority of the crown and of the people, is unknown to the constitution, and, with one trifling exception,[1] is unrecognized by law. The prime minister, as such, has no precedence over any other member of the Privy Council, and in the cabinet may find himself overruled or outvoted. It is of course always open to him to force the resignation of one or all of his colleagues at any time, and in this way he possesses a reserve power which he can bring into play whenever he conceives the question at issue of sufficient moment to warrant its exercise. This naturally gives him a degree of weight not enjoyed by any other minister, but a wise prime minister does not often invoke his supreme authority, and as regards all ordinary acts of administration is content to abide by the judgment of his colleagues.

The office of prime minister is conferred by the governor-general, who upon the resignation of his advisers 'sends for' —in theory, whomsoever he pleases—in practice for the recognized leader of the opposition in parliament, and entrusts him with the formation of a new administration. The person to whom this duty is confided confers with the leading members of his political party, and when ready submits the names of his proposed colleagues to the governor-general, who signifies his approval of the arrangements. Thereupon the ministry is formed. Such of the members designated as do not belong to the Privy Council are then sworn of that

[1] R. S. C., chapter 4, section 4, subsection 2, provides that 'The Member of the King's Privy Council holding the recognized position of First Minister shall receive in addition [to his salary as minister] five thousand dollars per annum.'

body, after which each one is appointed by commission under the great seal to the portfolio assigned to him. Before assuming charge of his department the newly appointed minister takes the oath of office in the presence of the governor-general. Should the person commissioned by the governor-general to form a ministry fail in the task, he so acquaints His Excellency, who thereupon invites suggestions as to whom he should call upon, or seeks advice elsewhere.

During the interval between the resignation of one administration and the assumption of office by another, the outgoing ministers, though no longer in a position to advise the crown collectively, continue to discharge their ministerial functions as heads of departments until their successors are appointed.

For a considerable period in the history of Canada the office of prime minister was not in reality held by one person, but might almost be said to have been in commission. From the union of the two Canadas in 1841 down to Confederation, if the leader of the government were from Upper Canada, his most influential French-Canadian colleague shared with him the authority and prestige of the first minister. If, on the other hand, the leader came from Lower Canada, his English lieutenant was associated with him in the office of chief adviser of the crown. Thus there was successively the La Fontaine-Baldwin, the Hincks-Morin, the Macdonald-Cartier, the Brown-Dorion, the Macdonald-Sicotte, and the Taché-Macdonald administrations. So unsatisfactory was this felt to be that, when entrusting Sir John Macdonald with the formation of the first Dominion ministry, the governor-general deemed it necessary to observe to him : ' In authorizing you to undertake the duty of forming an administration for the Dominion of Canada, I desire to express my strong opinion that in future it shall be distinctly understood that the position of First Minister shall be held by *one* person, who shall be responsible to the governor-general for the appointment of the other ministers, and that the system of dual First Ministers, which has hitherto prevailed, shall be put an end to.' And this was done.

The governor-general selects his prime minister, and the

prime minister selects his colleagues. Both constitutionally have entire freedom of choice, yet both are circumscribed in its exercise. For, as the governor-general is virtually restricted in his choice of a chief adviser to the leader of the opposition or to the person whom that gentleman may recommend, the prime minister, in turn, is limited in the formation of his cabinet by various considerations, one being that his new colleagues must be members of one or other branch of the legislature, and must also be acceptable to the House of Commons, or more particularly to the members coming from the province which they are to represent in the cabinet. It is also extremely desirable that a cabinet minister should be *persona grata* with, or at least not personally objectionable to, the governor-general, for although the constitutional obligations of his office might require a governor to subordinate his own feelings, even in such a case, to the exigencies of the public service, those exigencies must surely be grave which would justify a prime minister in forcing upon the representative of the crown as a confidential adviser one with whom, for one reason or another, all personal relations might be distasteful, if not impossible.

While all appointments under the crown are made on the advice of the cabinet, certain high positions are, by custom and common consent, held to be peculiarly in the gift of the prime minister. Chief among these are the offices of cabinet minister, lieutenant-governor, privy councillor, the speaker of the Senate, and chief justices of all courts. The clerks of the Senate and House of Commons, the sergeant-at-arms and other crown officers of the upper and lower houses, the librarians of parliament, members of the Treasury Board and of the Committee of Internal Economy of the House of Commons, likewise are made on his recommendation. To him also belongs the special right of advising the crown in respect of the convocation and prorogation of parliament, as well as the dissolution of the House of Commons.

In filling the higher offices of state—as, for example, lieutenant-governorships—it is customary for the prime minister to acquaint the governor-general, in advance of the formal minute of council, with the name of the person whom it

is intended to recommend, together with a few particulars not contained in the official submission, indicating his fitness for the position. This is done as a matter of courtesy, in order that the governor-general may know something beforehand of the person whose appointment he is to be asked to sanction.

Though on all important questions of public policy the prime minister is the intermediary between the crown and the cabinet, individual ministers have the right, as privy councillors, to communicate directly with the governor-general in respect of matters pertaining to their several departments. It is now proposed to consider these departments somewhat in detail.

The President of the Privy Council

The president of the king's Privy Council for Canada, like all political heads of departments, is appointed by commission under the great seal, and holds office during pleasure. There is no direct parliamentary creation of this portfolio, nor of the Privy Council office over which the president has charge, which therefore, strictly speaking, is not a department of state, though for practical purposes accounted as such. The principal duty of the president is to preside at cabinet councils, of which, when present, he and not the prime minister is chairman. The latter, as has been said, enjoys on such occasions no formal pre-eminence over his colleagues. In the present cabinet (1912) the prime minister is the president of the council, but such has not always been the case. Sir John Macdonald successively united several portfolios with the office of first minister, and at the time of his death was minister of Railways and Canals. Alexander Mackenzie was minister of Public Works during the whole course of his premiership. Sir John Thompson was minister of Justice ; Sir Charles Tupper secretary of state. In the earlier years of Confederation the presidency of the council was generally filled by the junior minister, and, with the exception of a few months in 1877, during which Edward Blake held the portfolio, this continued to be the rule until 1883,

when Sir John Macdonald took the office of president, which in 1889 he relinquished for the portfolio of Railways and Canals. In 1891 Sir John Abbott, and in 1894 Sir Mackenzie Bowell, held the presidency of the council in conjunction with the premiership, and their example was followed in 1896 by Sir Wilfrid Laurier, whose long tenure of the position almost identified it in the public mind with that of first minister, from which, however, it is distinct.

Business of the various departments requiring the sanction of the governor in council comes before that body in the form of reports from the minister at the head of the department concerned, addressed 'To His Excellency the Governor-General in Council.' These reports are laid before the council for consideration. Such of them as relate to matters of finance, revenue, expenditure, including appointments to the civil service and promotions therein, are referred, without alteration, by the president to the Treasury Board, a body whose functions will be explained later. The remaining reports are minuted in the Privy Council office, that is to say, while preserving their substance, they are so changed in form as to become reports of the cabinet, or rather of the committee of the Privy Council, as the cabinet is always officially styled. In this form they are known as minutes of council. At cabinet meetings these minutes are read one by one by the president, who signs each minute as it is agreed to. The minutes passed at a sitting are combined to form one report, which is entitled 'Report of a Committee of the Privy Council on matters of state referred for their consideration by Your Excellency's command.' This report is submitted by the president to the governor-general, who approves each minute separately by writing thereon the word 'approved,' followed by his name and the date, and returns them to the president. They are thence correctly known as approved minutes of council, or, in general parlance, 'orders-in-council,' though there may be nothing mandatory about them.

In certain cases corresponding to those which in England call for action by the Privy Council, such as the carrying into effect of statutory provisions, the cabinet passes what are rightly designated 'orders-in-council.' Any issue of

the *Canada Gazette*, taken at random, contains several such orders-in-council. One amends the regulations governing the administration of timber lands within the Rocky Mountains. Another establishes certain standards of quality for beverages and fruit juices. A third disallows an act of a provincial legislature. A fourth directs the issue of a proclamation fixing a public holiday. A fifth approves a seal of office.

In their original form all these are reports to the governor-general in council from ministers at the heads of departments. As such they reach the Privy Council office, where, instead of being turned into minutes, they are given a mandatory form.

When a minute or order-in-council is passed, that is, when it is approved by the governor-general, a copy, certified by the clerk of the Privy Council, is sent with all convenient speed to the department especially concerned, and if the subject-matter in any way relates to the payment of money a second copy is supplied to the auditor-general.

Cabinet meetings are held with greater or less frequency according to the requirements of public business. During the session of parliament a meeting is called for every day on which the house sits, in order to enable ministers to talk over the order paper and agree upon their course of procedure in parliament. On Saturdays during session the cabinet generally sits all day, disposing of departmental business which has accumulated through the week. During the summer months the cabinet meetings are shorter and less frequent, but with the approach of autumn and a new session they increase in number and in length. Any member of the cabinet can cause a meeting of the council to be summoned by instructing the clerk to that effect.

Apart from presiding over cabinet meetings, the president's duties, as president, are largely nominal, though he may be assigned other functions by the governor in council. The permanent head of the council office is styled the clerk of the Privy Council. He ranks as a deputy head of a department, or, rather, before all deputy heads. There is an assistant clerk of the council and a staff of thirteen clerks.

The Minister of Finance

Unlike the practice which obtains in England, where the official status of a cabinet minister is determined by the office he holds, Canadian ministers of the crown take rank according to their individual seniority on the roll of the Privy Council, irrespective of the portfolios assigned to them. Thus the minister of Justice might be the senior privy councillor in the cabinet, in which case he would take precedence of all his colleagues, while his successor in that office, if but recently sworn of the Privy Council, might be the junior at the council board.

Although this order is observed in Canada on all ceremonial occasions, the rule otherwise finds an exception in the person of the minister of Finance, who, irrespective of his seniority as a privy councillor, is, as regards weight and influence, generally looked upon as second only to the prime minister. This is illustrated in the House of Commons, in which assembly he sits on the prime minister's right hand, and, in the absence of the latter, leads the house—marks of deference which are partly accounted for when his relation towards that body is understood.

The minister of Finance and receiver-general—to give him his full title—is the member of the cabinet primarily responsible to parliament for the finances of the country—a matter always of special concern to the House of Commons. He has the principal voice in the imposition and regulation of taxation. He negotiates the loans from time to time required for the public service. He largely controls the expenditures. It is his business to ask parliament to vote the amounts necessary to the carrying on of the government. Nor is his influence in fiscal matters confined to the House of Commons. It is felt in every branch of the executive government, and is a potent factor in the council chamber itself, where he sometimes discharges the not altogether agreeable duty of criticizing and, it may be, of opposing such projects of his colleagues as would involve a larger expenditure than, in his judgment, the resources of the country should be called upon to bear.

Some weeks before parliament meets, estimates of the sums needed for the services of the ensuing year are submitted by the various departments to the minister of Finance, who lays them before the cabinet, where they are discussed item by item. In these discussions the minister fills the rôle of a censor, with a view to curtailing, as far as may be consistent with the requirements of the public service, the demands of his colleagues upon the Treasury.

The estimates, when finally agreed upon, are brought down to the House of Commons by message from the governor-general, without whose authority no measure involving any charge upon the people can be received or considered. This message is presented by the minister of Finance, who moves that it and the estimates be referred to the Committee of Supply. Parliament votes the money in the form of a grant to the sovereign. When the royal assent is given to the Supply Bill, a minute of the Privy Council is passed, on the recommendation of the minister of Finance, by which the governor-general, as the representative of the crown, 'releases' these supplies, placing them at the disposal of the several departments. When a department wishes to draw upon any special vote, the deputy minister asks the auditor-general for a credit on any of the banks in which public moneys are kept. These credits are issued by the minister of Finance on the application of the auditor-general, who first satisfies himself that parliament has provided the money, and that the amount asked for is not in excess of the appropriation. The advances are subsequently recouped to the bank by the minister of Finance. In certain circumstances, instead of a credit, cheques are issued, but in both cases it is the minister of Finance who holds the purse, and thus exercises in the manner described an effective check upon the public expenditure.

Another point of contact between the several departments and that of Finance is to be found in an officer of the minister of Finance, styled the 'accountant of contingencies,' who deals with the contingent accounts of the whole inside service. Bills for printing, stationery, telegraphing, postage, travelling expenses, extra clerks, and all manner of petty expenses,

after having been certified by the deputy head under whose authority they were incurred, are sent to the accountant of contingencies for payment.

The department of Finance was originally known as that of the inspector-general. In 1859 (by 22 Vict. cap. 14) the name was changed to its present designation. There existed in those days, and for some years after Confederation, another financial department—that of the receiver-general—which also was presided over by a minister of the crown. This office seems to have been largely a sinecure, and in 1879 was merged into that of the minister of Finance, who became, *ex officio*, receiver-general (42 Vict. cap. 7). It is in the name of the receiver-general that the government moneys are kept in the banks, and all sums from whatever source paid into the Treasury to the credit of the government are deposited to the credit of the receiver-general.

The Finance department is charged with the management of the public accounts, debts and obligations of the Dominion. It also controls the currency, including the issue and redemption of Dominion notes. This branch is managed by an officer called the 'comptroller of currency,' acting under the direction of the deputy minister of Finance.

The department also administers Government Savings Banks established at Toronto, Halifax, St John, Winnipeg, Victoria, Charlottetown and a few other places in the Maritime Provinces. These institutions (which are distinct from the Post Office Savings Banks) are in charge of a local officer called the assistant receiver-general, who, in addition to his duties as manager of these banks, is an agent of the minister of Finance for the issue and redemption of Dominion notes.

The department of Insurance is likewise under the direction of the minister of Finance, through an officer known as the superintendent of Insurance, who has the rank, and, *quoad* the administration of the Insurance Act, the powers, rights and privileges of a deputy head. The expenses of this office are met by an annual assessment upon all insurance companies doing business in Canada, in proportion to the gross premiums received in the Dominion during the previous year.

The payments connected with the maintenance of the

Ottawa branch of the Royal Mint are made by the minister of Finance.

The Treasury Board

The Treasury Board is, in law, a board appointed to act as a committee of the Privy Council, composed of the minister of Finance and any four of his colleagues in the government, nominated by the governor in council. In fact, it is a sub-committee of the cabinet, empowered to deal with such matters relating to finance, revenue and expenditure as may be referred to it by the council or to which the board may think it necessary to call the attention of the cabinet.

A report touching a matter falling under any one of the above heads, made by a minister at the head of a department to the governor in council, is, in the ordinary course, referred by the president to the Treasury Board, in order that the proper inquiries may be instituted as to whether the necessary conditions have been complied with, and everything is in regular form. The board holds its sittings in the office of the minister of Finance, who is *ex officio* chairman, the deputy minister of Finance being the secretary. A quorum of three is necessary to the dispatch of business.

When the board has duly inquired into a matter referred for its consideration and arrives at a conclusion thereon, it so reports to the governor in council, either favourably or unfavourably, as the case may be. The council, if it concur in a favourable report, adopts it as its own, and submits it for the approval of the governor-general. If the council adopt an unfavourable report, that is the end of the matter. Should the council disagree with a report of the board, whether favourable or unfavourable, it can refer it back for reconsideration.

Speaking generally, the cabinet exercises its discretion in respect of references to the Treasury Board. For instance, although it is usual to refer all appointments to office to the board, there is nothing to prevent the council from dealing with such matters, without reference to the board. On the other hand, there are certain classes of subjects, such as the

remission of duties, which the law requires that the Treasury Board must first recommend before they can be dealt with by the governor in council.

The Auditor-General

Closely associated with the Treasury Board is the auditor-general, an officer appointed by the governor in council at the instance of parliament, for the more complete examination of the public accounts, and for reporting thereon to the House of Commons. In order to ensure his independence of the executive, it is provided that he shall hold office during good behaviour, that is to say, he can be removed from his position by the governor-general only on an address of the Senate and House of Commons.

The duty of the auditor-general is to keep watch over the public expenditure, to see that no cheques issue for which there is not a direct appropriation by parliament, or without the authority of the governor in council. He is also required to satisfy himself in the case of applications for payments in respect of work done for, or material supplied to, the government, that such work has actually been performed, that such material has been furnished, and that the price charged is according to contract, or, if there be no contract, that it is fair and just. The auditor-general examines and audits the accounts of the several departments, and lays them before the House of Commons in an annual report, which is always awaited with interest by gentlemen on the left of the speaker. He reports to the governor-general in council through the minister of Finance, who also presents his reports to the House of Commons. In the event of the minister of Finance failing to do this, the auditor-general is directed by law to present them himself.

For the due exercise of his functions the auditor-general is vested with large powers. He can apply to a High Court judge for a subpoena compelling the attendance of any witness, no matter of what rank or degree. He can examine such witness on oath or affirmation. Should a witness fail, without

valid reason, to attend, or refuse to produce any document in his possession, or to be sworn, or to answer any lawful and pertinent question, he lays himself open for each failure or refusal to a fine of $100.

In cases where the auditor-general declines to sanction a payment, an appeal lies to the Treasury Board, which is constituted the judge of the sufficiency of his objections, and which can either sustain him or overrule him at its discretion.

The auditor-general's staff consists of the assistant auditor-general and about seventy clerks, controlled independently of ministerial supervision, save that it belongs to the government to vote the money necessary for the administration of the office.

For reasons of convenience the auditor-general is commonly regarded as a deputy head of a department, but there is little analogy between the two positions, either as regards the powers or the tenure of the office.

It will be seen from the foregoing that the Treasury Board and the auditor-general are highly influential institutions, occupying an important relation, not merely towards every department, but also towards all persons having financial dealings with the government. This is so clearly recognized as to have given rise to the somewhat cynical remark that the three estates of the realm in Canada are, in an ascending scale, the governor in council, the Treasury Board, and the auditor-general !

The staff of the inside service of the Finance department, exclusive of the office of the auditor-general and of the superintendent of Insurance, consists of the deputy head, the assistant deputy head and about seventy clerks.

The Minister of Justice

The minister of Justice is the chief legal adviser of the government. Among his duties are, to see that public affairs are conducted according to law ; to superintend all matters connected with the administration of justice not falling

within the jurisdiction of the provincial authorities; to advise the governor-general upon all legal matters, and particularly with reference to (1) the giving or withholding of the royal assent to all bills that pass the Senate and House of Commons, (2) the exercise of the power of disallowance in regard to provincial legislation, (3) the grant or refusal of petition of right, (4) the exercise of the prerogative of mercy.

As attorney-general he advises the heads of the several departments of the government upon all matters of law connected with such departments; he is charged with the settlement and approval of all instruments that pass the great seal of Canada; and he conducts all litigation for or against the crown or any public department in respect of any subject within the authority or jurisdiction of Canada.

The responsibilities of the minister of Justice are of no ordinary character. The periodical examination of the acts of nine provincial legislatures in itself entails an enormous amount of careful work. The exercise of the pardoning power also involves much labour. Applications for clemency —as many as 1500 in one year—are received and virtually decided by him. After considering the circumstances of each case, he appends to the petition his recommendation in respect thereof, either that the unexpired portion of the convict's term be remitted and the prisoner be released from custody, or that no interference be made with the sentence—adding a brief *résumé* of the reasons which have guided him in his conclusion. The petition, with this advice, is thereupon submitted by the secretary of state to the governor-general. Upon His Excellency's approval being signified, the necessary instructions are transmitted to the officer in whose custody the prisoner is. Applications for the conditional liberation of convicts, commonly known as tickets of leave, follow a similar course.

In capital cases the minister of Justice, after reviewing the evidence and considering the report which the trial judge is required by law to furnish, submits his report to the governor-general in council. The question whether the sentence of death pronounced against the prisoner shall be set

aside or commuted, or whether the law shall be allowed to take its course, is left to the determination of the cabinet, which as a rule confirms the decision arrived at by its chief legal adviser.

The extradition of fugitive criminals is a matter which comes under the purview of the minister of Justice. A judge issues his warrant for the apprehension of a fugitive to Canada, on such evidence as seems to him sufficient, and commits the fugitive to prison. He reports the facts to the minister, who, upon the provisions of the law having been complied with, issues a warrant under his hand and seal of office, directing the gaoler who has the fugitive in charge to deliver him to the person duly authorized by the foreign state to receive him.

In the case of extradition of a Canadian fugitive from the justice of a foreign state with which there is an extradition arrangement, the minister of Justice, on the completion of certain formalities, advises the issue of a 'Warrant of Recipias,' addressed to the police officer selected for the duty, authorizing him to receive the prisoner and bring him back to Canada. This warrant is signed by the governor-general, and issued by the secretary of state under the privy seal.

Fugitive offenders coming to Canada from any other part of His Majesty's dominions are returned by warrant of the governor-general, on the advice of the minister of Justice, who also is charged with the superintendence of the penitentiaries of Canada. This branch of his department is managed by two inspectors of penitentiaries, whose annual report the minister lays before parliament.

The Dominion Police force forms another branch of the same department. This force consists of one commissioner, one inspector of police, one inspector in the secret service, one inspector in the Identification Bureau, seven sergeants and over seventy constables.

The power of disallowance of provincial legislation is exercised by the governor-general in council on the advice of the minister of Justice. In the instructions to lieutenant-governors, furnished to them on appointment, there is a clause directing that within ten days after assenting to a

bill passed by their respective legislatures, they shall send an authentic copy thereof to the secretary of state. The year within which such act may be disallowed is reckoned from the date of the receipt of the act by the secretary of state.

When exception is taken to a provincial act, the practice is for the minister of Justice to communicate to the lieutenant-governor, through the secretary of state, the grounds of his objections, and, in cases of sufficient gravity, to require an assurance that the matter complained of will be righted by the legislature within the period set for disallowance. There is always disinclination on the part of the Dominion government to invoke the power of disallowance against the provinces, and it is only in imperative cases that this extreme step is resorted to.

When disallowance is determined upon, the minister of Justice submits to the governor-general in council a recommendation to this effect, whereupon an order-in-council is passed and a copy thereof (with a certificate under the privy seal of His Excellency the governor-general testifying to the date of the original receipt of the act by him) is communicated by the secretary of state to the lieutenant-governor, whose duty it is to make the fact known by speech or message to his legislature, or by proclamation, and the act is annulled from the date of such announcement.

Judges of all courts are appointed by the governor in council on the recommendation of the minister of Justice, through whose department they are granted leave of absence from time to time, and are finally retired. The registrar and officers of the Supreme and Exchequer Courts of Canada are under his supervision.

When to these duties is added the daily task of advising the various departments of state upon a multitude of legal questions which constantly arise in the carrying on of public business, it will readily be understood that the portfolio of Justice is one of the most onerous and responsible of the cabinet offices. The staff of the inside service of the department consists of the deputy head, four legal officers (one of whom is secretary to the department), one assistant legal officer and about ten clerks.

The Solicitor-General

The solicitor-general is an officer appointed by the governor in council to assist the minister of Justice in the counsel work of his department. In practice he has a seat in parliament, and is a member of the ministry, though not of the cabinet, his position corresponding somewhat to that of a parliamentary under-secretary in England.

The Secretary of State

The ancient office of secretary of state plays an important part in the working of the Canadian constitutional system. The secretary of state is, for the public, the channel of approach to the crown and the official mouthpiece of the governor-general. In the years immediately succeeding Confederation there were two secretaries of state—one for Canada, and the other for the Provinces. In 1873 the latter department became merged in the former. The combined offices have since formed one department, presided over by the secretary of state of Canada, whose functions it is now proposed briefly to consider.

The secretary of state is the medium of communication between the government of Canada and those of the provinces. All correspondence between the two governments is conducted by him with the lieutenant-governor, to whom he stands in somewhat the same relation as the secretary of state for the Colonies does to the governor-general. He also conveys the decisions of the governor-general, in respect of all convict cases, to the sheriffs and gaolers whose duty it is to give effect thereto, and generally replies to formal communications addressed to the government.

The secretary of state is, as has been observed, the custodian of the great seal of Canada. The general rule governing the use of the great seal is that it should be put only to instruments the issue of which is authorized by statute or by the governor in council, and which bear the governor-general's signature or that of his duly authorized deputy. Commissions of appointment, Dominion land-grants, writs

of election and proclamations, are among the documents that fulfil these conditions.

The great seal of Edward VII, which is still (1912) in use, is of steel, five inches in diameter. The central figure is that of His late Majesty, seated on his throne, crowned and holding orb and sceptre. About him are displayed the shields of the four original provinces of Confederation, Ontario, Quebec, Nova Scotia and New Brunswick, and below, the shield of the United Kingdom of Great Britain and Ireland, the whole surrounded by the legend, 'Eduardus VII. D: G: Britt: Et Terrarum Transmar: Quae In Dit: Sunt Brit: Rex F. D: Ind: Imp.,' and in a segment of an inner circle under the king's feet, the words and figures 'In Canada Sigillum 1904.'

When the secretary of state leaves office he returns the great seal into the hands of the governor-general, who delivers it to his successor. On the demise of the crown, the new sovereign issues a warrant under his sign manual, authorizing the continued use of the old seal until a new one is prepared. The old seal, on being defaced, becomes, by custom, the property of the secretary of state holding office at the time of the change.

The secretary of state is also the custodian of the privy seal, which bears as a device the private arms of the governor-general encircled by his name and dignities. This seal is not bestowed on the secretary of state with any ceremony, and is left behind by the retiring governor-general. It is commonly employed to seal less important documents than those which pass the great seal, such as passports, certificates, warrants and the like; generally speaking, things done on the recommendation of one minister, as distinguished from those performed on the advice of the council, which are reserved for authentication under the great seal.

In addition to his ceremonial functions the secretary of state discharges duties of a more prosaic character. He administers the Companies Act, the Naturalization Act, the Canada Temperance Act, and is charged with all matters not specially assigned to any other minister. Addresses

and orders of the Senate and House of Commons are sent to him in the first instance. It is the duty of his officers to call upon the various departments for the information desired by parliament, to combine, in cases where an inquiry relates to more than one department, the answers received from those concerned, and to see that no unnecessary delay takes place in the bringing down of these returns.

The secretary of state is also the registrar-general, and, as such, registers all proclamations, commissions, charters, land patents, and other instruments issued under the great seal, also bonds, warrants, surrenders, and other public documents requiring registration. Patents of Dominion lands are, for reasons of convenience, recorded in the department of the Interior by officials specially authorized for that purpose under the hand and seal of the registrar-general.

The Dominion Archives (for many years a branch of the department of Agriculture) were placed under the care of the secretary of state in March 1912.

The Department of External Affairs

This department, as its name imports, administers what, for lack of a better phrase, is commonly termed the 'external affairs' of the Dominion, whether relating to the motherland, the sister dominions and colonies, or to foreign countries. The department of External Affairs dates from the year 1909, having been constituted by the act 8-9 Edw. VII, cap. 13, and placed under the direction of the secretary of state for Canada, with the title of secretary of state for External Affairs. Before its creation the impression very generally prevailed, even within the service, that Canada's external relations were conducted through the secretary of state, but such never was the case. The department of the secretary of state for Canada—to refer to the English system—offers a certain analogy to the Home Office and to the Colonial Office as well, but it bears no affinity to the Foreign Office, or to the United States department of state, for the reason that its sphere of action is circumscribed by the bounds of the Dominion. With the conduct of negotiations with foreign

countries, or in respect of questions whose scope and bearing, though within the Empire, lie beyond the limits of Canada, it has no official cognizance. All such matters reach the government of Canada through dispatches addressed to the governor-general. Under the old system these dispatches were referred by His Excellency to the Privy Council, which in turn referred them to the minister concerned, who in due course made his report thereon to the governor in council. This report was minuted in the Privy Council office, in the manner already explained, and, when approved by His Excellency the governor-general, became the government's reply to the dispatch on which it was based. This method was open to several objections. No doubt the more important questions of policy in regard to external affairs were discussed and agreed to in council, but the terms of the report in which that policy was set forth frequently received but scant consideration. In the preparation of these reports too little regard was given to what had gone before, which is not surprising, as it not infrequently happened that the draughtsman was not in possession of all the correspondence on the subject. A dispatch does not always disclose upon its face enough to determine readily from a hasty glance just what department it concerns, and the fact that it relates to more than one department might easily escape notice. Thus it became possible that a department might get the first and third dispatch of a series, while the second and fourth had been referred elsewhere. And so the feeling grew that cabinet councils were not, after all, the place for the reading and distribution of lengthy dispatches, and that this had much better be done elsewhere. The result was the establishment of the department of External Affairs.

Under the new order of things all dispatches received by the governor-general which His Excellency desires to communicate to his advisers are referred direct to the secretary of state for External Affairs, who in turn refers them to the several departments. These departments furnish him with all available information, together with the views of their head upon the subject-matter to which the dispatch relates, and, having informed himself by this means, the secretary of state

makes his report to the governor in council. In this way the responsibility for the proper conduct of this branch of the public business rests upon one department, which, free from the disadvantages of the old system, is enabled to secure for these important subjects treatment on a coherent and uniform plan.

The initiation of this reform gave rise at first to some misapprehension. When the bill creating the department of External Affairs was before parliament, the report went abroad that the Canadian government intended thereby to take into its own hands the conduct of its foreign relations. The prime minister and the secretary of state, however, made it clear to the House of Commons that no constitutional change was intended by the measure, which merely aimed at an improvement in departmental procedure, and that Canada's official communications extending beyond the bounds of the Dominion would continue to be made through His Excellency the governor-general as before.

The department of External Affairs is specially charged with all matters relating to the foreign consular service in Canada. It likewise issues passports for foreign travel.

The King's Printer

The government printing and stationery office originally formed a branch of the department of the secretary of state. In 1886 it was constituted a separate department of the public service under the control of the secretary of state. This department is charged with the execution of all printing on behalf of the government; the purchase and distribution of all paper, books or publications required for the public service; the sale of all books or publications issued by order of parliament or the government; and the audit of all accounts for advertising.

The deputy head of this department is styled the king's printer and controller of stationery. Like all deputy ministers he is appointed by commission under the great seal, and holds office during pleasure. He has the general management and control of the services mentioned above, in the performance

of which duties he is assisted by two officers, styled respectively the superintendent of printing and the superintendent of stationery. The first-named has charge of the printing branch of the department at Ottawa, in which all printing, lithographing, binding and other work of like nature required for the service of parliament and the several departments of government are executed. The superintendent of stationery has, under the direction of the king's printer, charge of the purchase and supply of paper and stationery required for the public service.

The staff of the department is composed of the above-named officers and about fifty clerks, exclusive of the journeymen, workmen, skilled hands and others engaged in mechanical service.

The Minister of Public Works

The minister of Public Works is the successor to the member of the government of the old Province of Canada known as the chief commissioner of Public Works, the change of name having taken place at Confederation. In 1879 his department was divided into two departments of equal status, under two separate ministers—one retaining the old designation of minister of Public Works, the other styled minister of Railways and Canals. At this partition the somewhat unusual course was followed by the minister of Public Works (Sir Charles Tupper) of relinquishing the old for the new portfolio, and taking with him to the new department the deputy head and many of the senior officers, as well as most, if not all, of the office records. Thus in some respects the old department became the new one, dating from October 1879.

The minister of Public Works has the management, charge and direction of the following properties belonging to the government of Canada: (1) public buildings, including their heating, lighting, maintenance, furnishing and upkeep; (2) the plant employed in the construction, improvement and repair of harbours, piers and works for the betterment of navigation; (3) the slides, dams, piles, etc., used for facilitating the transmission of timber; (4) roads and bridges;

(5) telegraph lines on government lands; and (6) certain ordnance properties.

The department of Public Works is one of the five great spending departments of the government, the others being Railways and Canals, Militia, Marine and Fisheries, and the Naval Service. The duties attaching to its administration are, by reason of their multitudinous detail, of the most exacting and laborious nature. In 1910 its expenditure was approximately $12,000,000, not composed of fairly large sums such as would be involved in the building and subsidizing of ships and railways, but for the most part made up of comparatively small sums—for the erection of a post office in one town, the purchase of a site for a customs house in another, repairs to a wharf in a third, dredging a harbour in a fourth, and so on across the continent from Halifax to Victoria.

The difficulty of applying this money to the best advantage of the public service, and at the same time of satisfying the local interests and of pleasing everybody concerned, is enough to tax the ingenuity and resources of the most capable of administrators. He who undertakes the task must be prepared to deal with very unreasonable people; to meet criticism often founded upon ignorance, sometimes intentionally unjust; to be charged with incompetence, extravagance, political favouritism, and worse; to be held accountable for mistakes he did not commit, for mishaps that could not be averted, and for accidents over which he had no control. A former minister, the Hon. Alexander Mackenzie, has left on record eloquent testimony to the embarrassments and anxieties of the position; and while in his case the difficulties were probably enhanced by the fact of his being also the prime minister, there can be little doubt that the position is one in itself demanding much aptitude for detail, combined with unlimited patience and firmness.

The staff of the department of Public Works consists of the deputy minister, assistant deputy minister, secretary of the department, chief engineer, and over two hundred engineers, architects, draughtsmen and clerks.

The Minister of Railways and Canals

It has already been observed that when in 1879 the department of Public Works was divided, the then minister elected to take the new portfolio of Railways and Canals, and that the deputy head and many of the senior officers accompanied him to his new sphere of action. It would be more accurate to say that they remained where they were, for the new department kept possession of the old ground, the department of Public Works finding other quarters.

The minister of Railways and Canals has the control and management of all government railways and canals, and of all works and property appertaining thereto. These railways comprise the Intercolonial Railway (1492 miles), the Windsor Branch, a line extending from Windsor Junction, Nova Scotia, on the Intercolonial Railway to the town of Windsor, operated by the Dominion Atlantic Railway Company (32 miles), and the Prince Edward Island Railway (267 miles)—making a total of 1791 miles. These railways, as regards their practical operation, have recently been placed under a board of management, of which the deputy minister of Railways is chairman.

The minister of Railways possesses jurisdiction over the location of all lines of railway constructed under Dominion charters. Location plans must be filed with him and receive his approval before construction can be begun.

Subsidies voted in aid of railway construction are paid through this department, which enters into contracts with the aided roads for the purpose of establishing that the conditions imposed by parliament and the governor in council are complied with before the money is paid over.

The National Transcontinental Railway is composed of two divisions, the eastern division between Moncton and Winnipeg, and the western division between Winnipeg and the Pacific Ocean. The eastern division is being constructed by the government under four commissioners appointed by the governor in council. The government supervises the building of the western division by the Grand Trunk Pacific

Railway, and the chief engineer of the department of Railways and Canals annually reports to his minister on the character and progress of the work.

Until 1903 a committee of the cabinet, styled the Railway Committee of the Privy Council, administered the Railway Act, thus exercising a certain supervision and control over all Canadian railways. Parliament then abolished this committee, and appointed in its stead a board composed of three railway commissioners (the number was afterwards increased to six). This board regulates the railways under large powers. Its decisions and orders are final, subject to an appeal to the Supreme Court on questions of law and jurisdiction, and the general authority of the governor in council in his discretion. There can be no better evidence of the growth and progress of a country than is afforded by its railway statistics. In 1879, when the department of Railways was organized, there were 6858 miles of railway in operation throughout Canada; in 1912 there were 26,000 miles.

This department also administers the canal system of the Dominion, which has a total length of 144 miles, and cost, adding together the outlay on original construction, subsequent enlargement and improvements, upwards of ninety-seven million dollars. The extent of the waterways made available by these canals for purposes of navigation is nearly 2000 miles.

The staff of the department at Ottawa consists of the deputy minister, the general consulting engineer, the secretary, chief engineer, departmental solicitor, comptroller of statistics, departmental auditor, chief daughtsman and about seventy clerks, engineers and draughtsmen.

The Minister of the Interior

In 1869 Canada acquired by purchase from the Hudson's Bay Company, for the sum of £300,000 sterling, all their interest in that vast region stretching beyond the Great Lakes westward to the Rocky Mountains, then known as Rupert's Land and the North-West Territory. The administration of these territories, together with the lands and affairs of the

Indians and the Geological Survey, were entrusted to the department of the secretary of state for the Provinces; the control of Dominion lands, ordnances and Admiralty lands being vested in the secretary of state for Canada. In 1873 an act was passed (36 Vict. cap. 4) abolishing the department of the secretary of state for the Provinces, and distributing its functions between the secretary of state for Canada and a new department, that of the Interior, to which were assigned the subjects enumerated above. Since that date the management of Indian Affairs, and of the Geological Survey, has been transferred elsewhere, but the minister of the Interior still administers the Dominion lands, including the public lands of Manitoba, Saskatchewan, Alberta and (with certain minor exceptions) all other lands owned by Canada, wherever situated within the Dominion. He also continues to control the Yukon Territory, which was constituted a separate territory by the act of 1898, 61 Vict. cap. 6, as amended by the act of 1901, 1 Edw. VII, cap. 42, and the 'North-West Territories,' by which is now meant all British possessions in North America outside the Canadian provinces and Newfoundland, including those vast regions formerly known as Athabaska, Mackenzie, Keewatin, Franklin and Ungava, and beyond to the North Pole. The chief executive officers of the Yukon and the North-West Territories are styled commissioners of their respective territories. They are appointed by the governor in council, and act under instructions of the minister of the Interior.

The department of the Interior affords, perhaps, the most striking illustration of the Dominion's wonderful growth that is to be found in the official records. Starting with a staff of thirty-eight clerks, its employees of the inside service numbered in 1912 considerably more than twice that of the whole civil service of Canada at Ottawa in 1873. In 1874 it received and dispatched altogether about 7500 letters, and collected from the sale of Dominion lands $27,000. In 1910 it had a total correspondence of considerably over 2,000,000 letters, while the revenue derived from the sale of Dominion lands was more than $3,000,000. The number of homestead entries rose from about 500 in 1875 to 41,500 in 1910. This is, in fact, the chief business of the department. Canada

possesses all the requisites of a great and prosperous country, save only people. Her vast and fertile plains could maintain a hundredfold the number that to-day dwells within her borders. Population is the great desideratum. To procure these people is the special function of the department of the Interior. To this end an organized system has been developed with the object of making the attractions of Canada widely known, and of inducing emigrants to try their fortune in the Dominion. A farm of 160 acres of the finest wheat-producing land in the world, free, on condition of residing on it for three years and of doing just enough in the way of cultivation to evidence the bona fides of the settlers, together with an adjoining 160 acres as a pre-emption in certain districts, at $3 an acre, is surely an offer that only requires to be known to be appreciated.

In pursuance of this paramount object of attracting suitable emigrants there is, first, a branch of the department devoted to surveying and mapping out the public lands for settlement. Another branch grants homestead entries for these lands. A third conducts an emigration propaganda in Great Britain and abroad. There are many other subdivisions of this large department, each charged with the duty of administering some special portion of the national domain. Thus there are branches dealing with timber and grazing, mining, ordnance and Admiralty lands; with forestry and irrigation; with the school lands, the lands reserved for purposes of education, the interest on the proceeds of the sale of which is paid over to the three provinces of Manitoba, Saskatchewan and Alberta. There are also special officers charged with the inspection of ranches, the care of the Canadian national parks, the technical cartographic work of the department, and, lastly, there is the Dominion Observatory, a new and thoroughly equipped temple of science, which, under the efficient direction of the chief astronomer and a small staff of highly trained assistants, is rapidly becoming well known in the scientific world.

The staff of the department at Ottawa consists of the deputy head, the assistant deputy head, surveyor-general, Dominion lands commissioner, superintendent of immigration,

secretary of the department, chief astronomer, chief geographer, 10 chiefs of branches and about 750 clerks and messengers. The outside service is composed of about 380 persons employed in the Dominion Lands and Crown Timber Agencies, 470 engaged in immigration work, 20 connected with the national parks, 40 with forestry, 16 with irrigation surveys, 25 with the administration of the Yukon Territory, making a grand total in the service of the department of about 1700 persons. The immigration agents in the United Kingdom and at Antwerp report to the assistant superintendent of emigration in London, who in turn reports to the high commissioner for Canada.

The Department of Indian Affairs

The department of Indian Affairs was originally under military control, being administered by the commander of the forces, the officers in command at various points acting as superintendents or agents. About the year 1844 it was placed under the charge of the governor-general's civil secretary, who held a commission under the imperial government as superintendent-general. In 1860 it passed under the Crown Lands department. At Confederation it became attached to the department of the secretary of state for Canada, to be transferred by order-in-council in 1869 to the secretary of state for the Provinces. In 1873 it was placed under the department of the Interior, and in 1880 (43 Vict. cap. 28) was constituted a separate department under the control of the superintendent-general of Indian Affairs, who, the act declared, was to be the minister of the Interior. The latter provision was afterwards modified to include any minister appointed by the governor in council. As a matter of fact, the minister of the Interior has always been the superintendent-general, except during the period 1883-87, when Sir John Macdonald held the office in conjunction with the presidency of the Privy Council.

The superintendent-general has the charge and direction of Indian Affairs, including the control and management of the lands and properties of the Indians in Canada. The

government, from a very early period, recognized the obligation devolving upon it in respect of the aboriginal inhabitants of the country. In the Province of Ontario treaties were made from time to time, whereby the Indians surrendered whatever usufructuary right they possessed in the land over which they roamed, generally in consideration of the grant or reservation for their exclusive benefit of defined areas, and of the payment of small annuities. The same policy prevailed in the North-West, and, to a limited extent, on Vancouver Island. In the Provinces of Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and the mainland of British Columbia no treaties were made with the Indians for the extinguishment of the Indian title, but reserves were set aside by these provinces to meet the requirements of the Indians. Under the provisions of the Indian Act the land comprised within these reserves cannot be alienated without the consent of the Indians. It is the duty of the superintendent-general to protect the reserves from trespass, to prevent the sale of intoxicants to Indians, to see that their trust funds are properly administered, to provide them with the necessary schools, and to assist them to become self-supporting and law-abiding members of the community. The government spends on Indian education nearly half a million dollars annually. At the close of the last fiscal year the capital held in trust for the different bands amounted to over six million dollars, the interest on which is distributed among them periodically. The Indian population of Canada is approximately 107,000, and is not decreasing. The Indians are subject to the operation of the ordinary law, both civil and criminal, except in so far as the Indian Act makes special provision for their exemption. They are, as a class, law-abiding.

The organization of the department of Indian Affairs follows that of the Interior, the nomenclature of the branches being much the same. Thus there are, besides the secretary's branch and the accountant's branch, which are common to all departments, the land and timber branch, the survey branch and the school branch. The staff of the department at Ottawa consists of the deputy superintendent-general, the

assistant deputy superintendent-general, who is also the secretary of the department, the Indian commissioner (who was for many years at Regina, afterwards at Winnipeg, and since 1908 at headquarters), five heads of branches, and about sixty inspectors, surveyors, draughtsmen and clerks.

The Minister of Agriculture

The department of Agriculture was created by act of the parliament of Canada in 1868, and charged with a variety of subjects having but little connection with the ancient and honourable calling from which it derived its name. Besides agriculture, the minister was given control of immigration, public health and quarantine, arts and manufactures, the census and statistics, copyright, patents of invention, trade marks ; and, as if this were not enough, he at an early period assumed the care of the archives, which he retained until 1912.

In the early years of the department its most active branch appears to have been that devoted to immigration. This work is no longer under the minister of Agriculture, having been transferred to the department of the Interior in 1892. A good deal of attention was also paid to measures for the prevention of contagious diseases among animals. Later on quarantine stations were established, but for a long time after its inception the department had but little direct concern with agriculture. Indeed, it was not until nearly twenty years had passed that the establishment of the system of experimental farms (1887) gave the first impetus in that direction. The venture proved highly successful, and to-day these farms and the smaller experimental stations throughout the country are proving of great educational value to the farmers of Canada.

Once started, the growth of the department on its agricultural side has gone on apace. The dairy and cold storage branch, the system of fruit inspection, the seed commissioner's branch, the live stock branch, the health of animals branch, the horticultural branch, the facilities afforded for the practical study of botany, entomology and kindred sciences, are all evidence of the excellent character of the work of educating

the farmer, which, begun by Sir John Carling, has been developed and extended under his successors.

Nor has the success which has attended the administration of the department been confined to agriculture and its allied subjects. The patents, copyright, trade marks, and industrial designs branches give their testimony to the enormous strides the Dominion is making from year to year; while if much is not heard of the public health and the quarantine division, it is only because its results are negative rather than positive in their nature. The less one hears of the director of public health, the greater the excellence of the work that officer is quietly and unostentatiously carrying on.

The staff of the department of Agriculture consists of the deputy minister (who is also the deputy commissioner of patents), the assistant deputy minister (who is also the secretary of the department), the director-general of public health, the director of experimental farms, the chief officer of the census and statistics, the veterinary director-general and live stock commissioner, the dairy and cold storage commissioner, the seed commissioner, the registrar of trade marks and copyrights, and about two hundred and forty chiefs, superintendents, technical officers and clerks.

The Dominion Archives

The first move in the direction of establishing an Archives and Record Office was made in 1872, when parliament placed the sum of $4000 at the disposal of the minister of Agriculture for the purpose. The minister of the day entrusted an official of his department with this duty, but that officer, while amply qualified for the post, was not provided with proper facilities for its administration. The position of archivist was not even created by the governor in council. For years Douglas Brymer laboured in the basement of the Western Block, doing, in spite of his limitations, excellent work, as his published reports abundantly show. Not only were his merits and services inadequately recognized, but rival collections of public records were suffered to grow up in the service. The department of the secretary of state possessed a somewhat similar

store of documents to that of the Archives, under the immediate charge of an officer known as ' the keeper of the records.' The Privy Council office likewise contained an accumulation of ' State Papers ' reaching back one hundred and fifty years. These several branches of the public service, though ostensibly devoted to the promotion of a common object, for years carried on a sort of triangular contest, each claiming to be the only true repository of the country's records. To such lengths was this unseemly strife conducted that copies of documents in the libraries of European capitals have been made for the Canadian Archives, at the public expense, when the originals of these very documents, in an excellent state of preservation, were all the time in one or other of the public departments at Ottawa.

On February 7, 1897, a portion of the Western Block was seriously damaged by fire, which destroyed many departmental records, the chief sufferers being the departments of Marine and Fisheries, and Militia. Shortly afterwards the government appointed a commission, consisting of the deputy minister of Finance, the auditor-general and the under-secretary of state, to inquire into and report upon the state of public records. This commission, in the exercise of its duty, made an inspection of all the departments, and reported in due course. After sending out the result of their investigations they recommended that the older and more valuable papers, including the archives in the department of Agriculture, should be brought together and committed to the custody of one person in a suitable fireproof building, where also antiquated departmental records might be stored. Effect was given to this recommendation in 1903. In 1904 Arthur G. Doughty was appointed archivist and keeper of the records, and the Archives building was completed in 1907. The Archives continued as a branch of the department of Agriculture until 1912, when, in virtue of the Public Archives Act of that year, it was transferred by order-in-council to the department of the secretary of state, and the archivist was raised to the rank of a deputy minister.

The Postmaster-General

The Post Office department, as a Canadian institution, dates from the year 1851, when the control of the postal service was transferred to the Canadian government by the imperial authorities, who up to that date had administered the postal affairs of all British North America.

The first postmaster-general after the transfer at once entered the government, and since then the office has always been one of cabinet rank. The duties of postmaster-general are such as the title of the office imports, and include the regulation from Ottawa of the postal arrangements in every province, city, town and hamlet in the Dominion. As might be surmised from the character of the service, the postmaster-general is vested with large powers. He makes all sorts of regulations, restrictions and prohibitions respecting the carriage of letters and newspapers. He enters into and enforces contracts relating to the conveyance of the mails. With the exception of the postmasters in cities and towns, he appoints all the postmasters in the Dominion.

At the head of this extensive system stands the deputy postmaster-general, who, under the minister, controls the manifold services of which both the inside and outside divisions of the department are composed. For purposes of administration the department at Ottawa is divided into branches, each under the immediate charge of a superintendent. Thus there are the railway mail service, the mail contract branch, the savings bank branch, the money order branch, the dead letter branch, etc. As regards the outside service, the Dominion is partitioned into seventeen divisions, each with an inspector of its own, and a chief superintendent over all.

With certain limited exceptions, dictated by common sense, the postmaster-general has the sole and exclusive privilege of collecting, sending and delivering letters within Canada, and any person who unlawfully invades his functions in this respect is liable to a fine of $20 for each and every letter illegally conveyed. The growth of the business of this

department has been phenomenal. The number of letters posted in Canada in 1910 amounted to the enormous total of 526,000,000 as compared with 41,000,000 in 1876, and it is most gratifying to note that there was a surplus from the operations of the department in the former year of nearly $750,000.

In 1911 the departmental staff at Ottawa consisted of the deputy postmaster-general, the assistant deputy minister, the secretary of the department, 11 heads of branches, 382 clerks, 23 sorters, 20 packers, 18 messengers, and 3 porters—460 persons.

The Minister of Marine and Fisheries

The list of duties devolving upon the minister of Marine and Fisheries by statute is of formidable length, no fewer than twenty-five subjects being placed under his control. Originally considerable, the list has grown by accretion, notably in 1904, when the management of the St Lawrence Ship Canal, together with the dredging plant, was transferred from the department of Public Works, as well as the hydrographic survey, both of that department and of that of Railways and Canals. Briefly to summarize his functions, the minister of Marine and Fisheries supervises the construction of lighthouses and fog alarms; maintains lights, buoys and other aids to navigation; regulates marine hospitals, the inspection of steamboats, the examination of masters and mates, pilotage, and inquires into wrecks. In addition he exercises such jurisdiction as is vested in the Dominion government over the seacoast and inland fisheries of the Dominion. The two main divisions of his department are (1) the Marine branch and (2) the Fisheries branch. The latter formed a separate department from 1884 to 1891, when the two were reunited and became one department again.

In the nature of things the sphere of the Marine department's activities lies chiefly along the seaboard and the main arteries of navigation. It has agencies at all the principal maritime towns, including Quebec and Montreal, where the local administration is carried on under the control of the

department at Ottawa. It is under these local agencies that lighthouses are built and equipped, that new aids to navigation are installed and maintained, and that the government steamers are repaired and outfitted.

The Fisheries branch administers what is undoubtedly one of the greatest assets of the Dominion. Few persons realize the immense worth of Canada's fisheries, which are not only the most extensive but also the most abundantly stocked waters in the world. In 1910 Canadian fishermen drew from the riches of the sea $30,000,000. As in the case of Marine affairs, the business of the Fisheries branch is largely carried on by the outside service, there being in 1910 about twenty inspectors of fisheries throughout the Dominion, upwards of one hundred and seventy-five fishery overseers, and about forty officers in charge of government fish hatcheries.

The line of division between Dominion and provincial jurisdiction in the matter of the fisheries has never been clearly defined. In 1896 the question was referred to the Judicial Committee of the Privy Council, which in 1898 decided that whatever property interest in its fisheries was possessed by a province prior to Confederation remained vested in it, but that the *regulation* of these fisheries appertained to the Dominion government. As regards inland waters this decision settled the question, and since 1898 the Provinces of Quebec and Ontario have issued all fishery licences in non-tidal waters, the making and enforcing of the regulations governing the times and methods of fishing remaining with the Dominion. With respect to tidal waters, however, the controversy is still undecided, the position of the Dominion in regard to them being that in these waters there was no ownership at any time, but only jurisdiction, and that this jurisdiction, originally exercised by the colonial government, is now vested in the governor-general of Canada as representing the king, and not in the province. The matter remains in this unsatisfactory condition. An arrangement has, however, been reached with the government of British Columbia, to submit a reference to the Supreme Court of Canada, with a view to settling the question of jurisdiction in tidal waters.

The staff of the department at Ottawa is composed of the deputy minister, assistant deputy minister, chief engineer, chief hydrographer, purchasing agent, commissioner of fisheries, various superintendents, engineers, inspectors, technical officers, and about one hundred clerks.

The Department of the Naval Service

In pursuance of the declared policy of the government to establish and maintain a Canadian navy, an act was passed by parliament in the session of 1910 (9-10 Edw. VII, cap. 43) providing, among other things, for the constitution of a department with the above title, presided over by the minister of Marine and Fisheries with the title of minister of the Naval Service. The new department was formed out of the department of Marine and Fisheries. The deputy minister of the latter, following the precedent set by the deputy minister of Public Works in 1879, relinquished the old office for the new. The director of the Naval Service, who is the next officer to the deputy head, was also transferred from the department of Marine and Fisheries, from which indeed the majority of the staff were in the first instance recruited.

The department of the Naval Service has the control and management of naval affairs, including the construction, purchase, maintenance and repair of all ships of war. The phrase 'Naval Service' is held to embrace the fisheries protection service, the hydrographic survey, tidal observations and wireless telegraph service, transferred from the department of Marine and Fisheries.

The statute creating the department of the Naval Service provides for the appointment of a naval board to advise the minister, but so far no such board has been organized.

The Minister of Customs

The functions of the minister of Customs are complementary to those of his colleague the minister of Finance. The latter, subject to the authority of parliament, determines what import duties shall be levied on goods brought

into the country, and the minister of Customs collects these duties.

The law provides that the master of every vessel entering any port in Canada shall proceed, without delay, to the customs house for the port, and there make a report in writing of the arrival of such vessel, giving full particulars of everything on board. In like manner no vessel can leave port without a clearance from the collector of customs. The collector of customs collects the duty on the goods thus imported, and deposits it in a duly authorized bank to the credit of the minister of Finance, where it forms part of the Consolidated Revenue Fund of Canada.

The collectors are assisted by a staff of officials varying in number with the size and importance of the port. There are sub-collectors, appraisers, preventive officers, examining officers, landing waiters and gaugers, besides the necessary number of clerks. Their duty is to ensure an honest collection of the revenue.

There is a Board of Customs which sits at Ottawa, under the chairmanship of the commissioner (who is the deputy head of the department). It is the duty of this board to interpret difficult points in connection with the tariff, and also to hear and decide appeals from the decisions of collectors and appraisers. The minister of Customs has the power under the act to make refunds of duties overpaid, or paid in mistake, at his discretion, but he has no authority to remit duties payable by law. Such remission can only be made by the governor in council, upon the recommendation of the Treasury Board.

The bonding system at present existing between the United States and Canada appears to have had its origin and early growth in reciprocal arrangements between the two countries providing for the passing and repassing of the frontier by traders and Indians of both countries. The completion of the canal system of Canada in 1845, and the opening of the Grand Trunk Railway to Portland in 1853, demonstrated to both peoples that the shortest, cheapest and most convenient transport routes could only be secured by using both countries. On December 4, 1856, the Canadian

government passed an order-in-council providing for the free transit of goods by railway through Canada, from points in the United States to other points in the same country. Reciprocal action was taken by the Congress of the United States, which on July 28, 1866, enacted, *mutatis mutandis*, the same provisions. Both the order-in-council and the act of Congress have since been amended in detail, but remain the fundamental authority for the bonding arrangements at present in force. The latest agreement between Canada and the United States regarding transit in bond is under the Treaty of Washington, 1871, articles xxix and xxx.

The inside service of the department of Customs consists of the deputy head, who, as has been said, is styled the commissioner, the assistant commissioner, the chief Dominion appraiser, the analyst, and about one hundred and seventy officers and clerks. The portfolio of Customs was abolished and the office of controller of customs created in 1892, by virtue of an act passed in 1887 (50-51 Vict. cap. 11). The controller was a member of the ministry, but not of the cabinet, his department being placed under the supervision and control of the minister of Trade and Commerce. The controllership of customs was in turn abolished by an act of 1897 (60-61 Vict. cap. 18), which revived the office of minister of Customs.

The Minister of Trade and Commerce

The act of 1887 establishing the department of Trade and Commerce (50-51 Vict. cap. 10) contains a proviso that it should only come into effect by proclamation. Sir John Macdonald, in whose administration the act was passed, never saw fit to inaugurate the system contemplated by it, and it was not until Sir John Thompson became premier that the statute of 1887 was brought into effect, from December 3, 1892.

The duties and powers of the department were not precisely defined at the outset. It was vested with jurisdiction over such matters of trade and commerce 'as are not by

law assigned to any other department of the government of Canada.' To this day, although the department has developed along lines of its own, it is not always easy for an outsider to differentiate what may be called its statistical trade functions from those of the department of Customs.

The chief concern of the department of Trade and Commerce is the extension of Canada's external trade, with the United Kingdom, the sister dominions and colonies, and also with foreign countries. To this end it established many years ago a service of trade commissioners in various parts of the world, whose duty it is to take measures for the development of Canadian commerce abroad. The reports of these commissioners are published weekly by the department and circulated all over Canada, to the great advantage of the business community. The minister of Trade and Commerce also administers the Inspection and Sale Act, with the exception of those portions with which the minister of Agriculture is charged, the Manitoba Grain (Inspection) Act, the Chinese Immigration Act, the Government Annuities Act and the Cullers Act.

An important division of the department of Trade and Commerce is the Annuities branch, established in 1908 by Sir Richard Cartwright, with a view to promote habits of thrift, to encourage the people of Canada to make provision for their old age, and to facilitate their doing so. This scheme possesses the great advantage of affording absolute security at the lowest possible cost. All that an intending participant has to do is to remit, from time to time, direct to the department at Ottawa, such amounts as he can spare for the purpose, or, if he prefer to do so, he can deposit the same to the credit of the receiver-general in any money order office. Upon these amounts four per cent compound interest is allowed, and at the age of fifty-five (which is the earliest age at which an annuity can begin), or at any later date desired, such annuity as the total amount then at his credit will purchase will be paid to him quarterly so long as he may live. No charge is made for expenses of administration. The minimum amount of annuity which may be purchased is $50 and the maximum $600. The earliest age at

which the purchase may begin is five. To each purchaser a contract or policy is issued, and a provident feature of the system is that there are no penalties or forfeitures. If payments should for any reason lapse, they may be renewed at any time; but even if arrears are not made up, the only effect will be that a smaller annuity will be secured. In 1911 1700 persons had availed themselves of the provisions of the act, and over $860,000 had been paid in purchase money. The average amount of annuity aimed at was $250. Every class of the community may be said to be purchasing annuities.

The present deputy minister of Trade and Commerce is the chief controller of Chinese immigration, and has charge of the statute relating thereto (R. S. C., cap. 95). The main feature of this act is the provision requiring every person of Chinese origin, irrespective of allegiance, to pay a head-tax of $500 on entering Canada.[1]

The staff of the inside service of the department proper consists of the deputy head, chief assistant and accountant, chief trade statistician, chief grain statistician, the superintendent of annuities and about twenty-five clerks.

The Department of Mines

This department, established in 1907, consists of two branches—the Mines branch and the Geological Survey, under the control of the minister of Mines, who in 1912 was the minister of Inland Revenue.

The functions of the Mines branch are defined by statute to be:

(*a*) The collection and publication of full statistics of the mineral production and of the mining and metallurgical industries of Canada, and such data regarding the economic minerals of Canada as relate to the processes and activities connected with their utilization, and the collection and preservation of all available records of mines and mining works in Canada;

(*b*) The making of detailed investigations of mining camps and areas containing economic minerals or

[1] See 'Immigration and Population' in this section.

deposits of other economic substances, for the purpose of determining the mode of occurrence, and the extent and character of the ore-bodies and deposits of the economic minerals or other economic substances ;

(*c*) The preparation and publication of such maps, plans, sections, diagrams, drawings and illustrations as are necessary to elucidate the reports issued by the Mines branch ;

(*d*) The making of such chemical, mechanical, and metallurgical investigations as are found expedient to aid the mining and metallurgical industry of Canada ;

(*e*) The collection, and preparation for exhibition in the Museum, of specimens of the different ores and associated rocks and minerals of Canada, and such other materials as are necessary to afford an accurate exhibit of the mining and metallurgical resources and industries of Canada.

The functions of the Geological Survey are :

(*a*) To make a full and scientific examination and survey of the geological structure and mineralogy of Canada ; to collect, classify and arrange for exhibition in the Victoria Memorial Museum, such specimens as are necessary to afford a complete and exact knowledge of the geology, mineralogy, palæontology, ethnology, and fauna and flora of Canada ;

(*b*) To study and report upon the facts relating to water supply for irrigation and for domestic purposes, and to collect and preserve all available records of artesian or other wells ;

(*c*) To map the forest areas of Canada, and to make and report upon investigations useful to the preservation of the forest resources of Canada ;

(*d*) To prepare and publish such maps, plans, sections, diagrams, and drawings as are necessary to illustrate and elucidate the reports of surveys and investigations ;

(*e*) To carry on ethnological and palæontological investigations.

While the Mines branch is a new creation, the Geological Survey, on the other hand, is one of Canada's oldest institutions. In 1842 Sir Charles Bagot, at that time governor-

general, recommended to the secretary of state for the Colonies that a Geological Survey of Canada should be begun. The colonial secretary, Lord Stanley, fell in with the suggestion and placed the matter in the hands of Sir William Logan. The provincial legislature voted £500 towards the new undertaking, and work was begun in 1843. Sir William Logan filled the position of director from 1842 to 1869, when ill-health compelled his resignation. He, however, continued to act as supervising head until a short time before his death in 1875.

In those days the Geological Survey was not connected with any department of the government, its director reporting direct to the governor-general. This system continued until the resignation of Sir William Logan, when an order-in-council placed the Survey under the control of the secretary of state for the Provinces, where it remained until transferred to the department of the Interior on the formation of the latter department in 1873.

Originally and for many years the headquarters of the Geological Survey were in Montreal. In 1881 the Survey was removed to Ottawa. In 1890 it became a separate department, and continued so until 1907, when it was merged in that of Mines. The officer in charge of the Survey is, and always has been, even when he presided over the department as its deputy head, known as the 'director.' He is assisted by a number of trained geologists, botanists, naturalists and other men of science, who, with the patience, industry and zeal characteristic of their class, are striving to interpret the secrets of nature.

The Minister of Militia and Defence

The functions of the minister of Militia and Defence are of a twofold character. Like his colleagues, he presides over a department of the civil service, which department is charged with the civil administration of the militia affairs of the Dominion, including the fortifications, ordnance, arms, stores and munitions of war, as well as the initiative in all matters involving the expenditure of money for militia purposes. In

the execution of this office he is assisted by a deputy minister and the requisite equipment of technical officers and clerks.

In respect of the military administration, the minister is advised by a council styled the Militia Council, appointed by the governor-general in council. This council is composed of four military members, the chief of the general staff, the adjutant-general, the quartermaster-general, the master-general of the ordnance ; and two civil members in addition to the minister—the deputy minister of Militia, and the accountant and paymaster-general of the department. The minister is the chairman of this council, the deputy minister the vice-president, and the assistant deputy minister the secretary.

The chief of the general staff, as first military member, is required to advise on questions of general military policy, of the organization for active service, and of military defence. The training of military forces, education of officers, intelligence, telegraphing and signalling are also among his special duties. He is assisted by three staff officers, a director of military training, a director of military operations and staff duties, and a director of musketry.

The adjutant-general is responsible for all questions of military administration. All appointments, promotions, retirements, honours and rewards are made upon his recommendation. He sees that all orders to the militia are properly issued and distributed, and that discipline is maintained throughout the service. He has charge of the military arrangements connected with the Royal Military College, and, through the director-general of medical services, of all medical and sanitary questions. Matters of ceremonial and discipline come under his supervision.

The medical services are specially organized under a director-general as a division of the adjutant-general's branch, and there are also two assistant adjutants-general.

The quartermaster-general has charge of the organization, administration and technical training of all transports, the remount, railway supply, barrack, ordnance and veterinary services. He is assisted by two staff officers—the director of

clothing and equipment, who is also the principal ordnance officer, and the director of transport and supplies.

The master-general of the ordnance is specially charged with the maintenance of fortifications, artillery and rifle ranges, and the construction of lesser military buildings (not exceeding $15,000 in cost). He decides upon the patterns, provisions and inspection of guns, small arms and ammunition, and of all artillery, engine stores and vehicles. He also has two staff officers under him, the director of artillery and the director of engineer service.

The presence of the deputy head and of the accountant and paymaster-general of the department on the Militia Council establishes a point of contact between the civil and military divisions of the service, and exercises a restraining influence in regard to the important questions of public expenditure. The Militia Council meets once a week. The system closely follows that in operation in the mother country. As in the case of the Army Council, the Militia Council has succeeded to the duties formerly discharged by the commander-in-chief, or, as the corresponding officer in Canada was styled, the general officer commanding the militia, with the exception of executive command, which has passed into the hands of the officers in charge of commands and districts, who are directly responsible to the council. To ensure that the council's orders are carried out, there is an officer known as the inspector-general, whose duty it is periodically to inspect the military forces of the country, and to see that everything is conducted in accordance with instructions. To assist the inspector-general in the performance of these duties are six inspectors—of cavalry, artillery, engineers, army service corps, medical service and ordnance service respectively.

The civil administration of the department at Ottawa consists of the deputy head, the assistant deputy minister, the accountant and paymaster-general, the director of contracts, the secretary of the department, eighty-four inspectors, surveyors, draughtsmen and clerks.

The Minister of Inland Revenue

The principal functions of the department over which the minister of Inland Revenue presides are to collect the duties of excise, which are levied chiefly on spirits, malt, beer, tobacco, cigars, cigarettes, snuff, vinegar and acetic acid. Every distiller, maltster, brewer, and tobacco or cigar manufacturer is obliged, before beginning business as such, to procure a licence for that purpose from the minister of Inland Revenue. The licence is granted at the discretion of the minister, and after the conditions prescribed by the act are complied with. These licences run for one year, and are subject to suspension or forfeiture by the minister for cause. Illicit distillation, and other infractions of the inland revenue laws, are punishable by fine and imprisonment, and sometimes by both, the penalty usually being severe. The outside service of the department of Inland Revenue is manned by district inspectors, collectors, deputy collectors, excisemen, and so forth, stationed at places where excise licences are granted. Duties of excise are fixed by the Inland Revenue Act. They are distinct from those levied under the customs tariff, and are much less subject to change.

Weights and measures are regulated by the minister of Inland Revenue under a special act. The Dominion standards of length and weight and the metric standards are kept in this department, which also has the duty of certifying all meters used for the measurement of electrical energy. Every inspector of weights and measures is furnished with one or more sets of standards, called local standards, carefully verified and authenticated by comparison with the departmental standards. With these are compared the weights, measures, balances and weighing machines used for purposes of trade, which are regularly inspected, and when found correct stamped or branded by the inspector. Appropriate penalties are provided for the use of false or unjust weights. The metric system is legally optional in Canada, though as a matter of fact it is not employed in commerce or the affairs of ordinary life, its use being confined to scientific purposes.

Besides excise and weights and measures, the department of Inland Revenue administers acts relating to a great variety of subjects, among which may be mentioned those relating to gas and electric light inspection, adulteration of food, agricultural fertilizers, commercial feeding stuffs, proprietary medicines, petroleum inspection and the exportation of electrical energy.

The staff of the department at Ottawa consists of the deputy minister, the secretary, the chief electrical engineer, the chief inspector of gas, the chief inspector of weights and measures, the chief analyst and about sixty officers and clerks. The portfolio of Inland Revenue was abolished in 1892, and the office of controller of Inland Revenue substituted therefor, under circumstances precisely similar to those already explained in the case of the department of Customs. Like that of Customs, the department of Inland Revenue was revived in 1897.

The Royal North-West Mounted Police

The Royal North-West Mounted Police is a constabulary force, formed shortly after the acquisition by Canada of the North-West Territories. Its work was to be the establishment of friendly relations with the Indians and the maintenance of law and order in the vast regions stretching from Winnipeg to the summit of the Rocky Mountains.

In the year 1873 Sir John Macdonald, at that time prime minister and minister of Justice, took the first steps towards the creation of this body, which he attached to his own department. Shortly afterwards his government went out of office, and the organization of the Mounted Police was completed under Alexander Mackenzie, the force remaining under the control of the minister of Justice until 1876, when it was transferred to the secretary of state. Upon the return of Sir John Macdonald to office in 1878, he, holding that the control of this force should always appertain to the prime minister, again took it with him, first to the department of the Interior, then to the Privy Council, and lastly to the department of Railways and Canals. Such also was the policy

of Sir Wilfrid Laurier, who retained the force under his control, and the Hon. R. L. Borden, on assuming office in 1911, maintained the tradition.

At the time of the organization of the force, what now forms the Provinces of Manitoba, Alberta and Saskatchewan was an almost unbroken solitude, save for the Hudson Bay trading posts and the trappers and Indians who roamed to and fro throughout the land. Shortly after this date civilization, recently planted in Manitoba, began to encroach on the wilderness, and treaties were made with the Indians. The building of the Canadian Pacific Railway rendered access comparatively easy, and before long the tide of settlement began to flow, bringing with it the usual quota of wild and lawless spirits that hang on the outskirts of civilization. It was in those days that the Mounted Police demonstrated their usefulness in protecting the peaceable settler on his homestead, and the Indian on his reserve, in sternly repressing all forms of disorder, and in making white man and Indian realize that go where they would they were not beyond the strong arm of the law. While thus useful in promoting order and security among all races, their presence was indispensable to the control of the Indians, who could only be effectively restrained by a display of authority.

Before the introduction of railways, the sphere of action of the Mounted Police was completely isolated from the rest of the Dominion. Means of communication were painfully irregular and slow, and those in command of the force had frequently to face occasions which called for the exercise of the greatest delicacy of judgment. That the Mounted Police acquitted themselves in the performance of their arduous and singularly varied duties with remarkable success is acknowledged by all who have a practical knowledge of early days in the North-West. So necessary were they felt to be that, when in 1905 Alberta and Saskatchewan were created autonomous provinces, it was mutually agreed between the Dominion and the new provinces that the Mounted Police should continue to exercise jurisdiction, as a force under the control of the Dominion government, for a period of five years—an arrangement which, for public

convenience, was later renewed for a further period of five years.

The original strength of the force was 300 officers and men. This number was increased to 500 in 1882, and to 1000 in 1885. Reductions have been made since 1885, and the authorized strength in 1911 was 700.

The departmental head of the Mounted Police force, under the prime minister, bears the title of comptroller, and is the deputy head of the department. Lieutenant-Colonel Frederick White has filled this office practically from the creation of the force, and his unwearied labours to maintain the high efficiency of this remarkably fine body of men have been recognized and appreciated by successive administrations. He is aided in his work by an assistant comptroller and a staff of clerks. The commanding officer is styled the commissioner, and under him in 1911 were 2 assistant commissioners, 12 superintendents, 33 inspectors and 5 surgeons. The headquarters of the Royal North-West Mounted Police Force are at Regina, with 10 divisional posts scattered throughout the North-West, and about 175 smaller detachments. In 1903 His late Majesty King Edward VII granted to the Mounted Police the privilege of using the prefix 'Royal.' Lord Minto, for six years governor-general of Canada, and more recently viceroy of India, is honorary commissioner of the force.

The Minister of Labour

In the year 1900 parliament passed a statute (63-64 Vict. cap. 24), known as the Conciliation Act, to aid in the prevention of industrial disputes, and to provide for the publication of statistical industrial information. The administration of this act was vested by order-in-council in the postmaster-general, who was empowered by parliament to 'establish and have charge of a department of Labour.' Under this authority a department was organized, and in a short time demonstrated its usefulness by successfully meeting the conditions it was created to serve; so much so that in 1909 (8-9 Edw. VII, cap. 22) a cabinet portfolio was constituted and filled by the

appointment of W. L. Mackenzie King, who had occupied the position of deputy head of the department, and who affords the only instance in Canada of promotion of a deputy minister to cabinet rank. The staff of the department of Labour consists of a deputy minister, who is the editor of the *Labour Gazette* (a publication in the interests of the industrial classes issued weekly from the department) and also registrar of the Board of Conciliation and Labour, together with an assistant deputy minister, and about sixteen technical officers and clerks.

In 1906 the Conciliation Act and the Railway Disputes Act were amalgamated and became the Act respecting Conciliation and Labour (R. S. C., cap. 96), which was placed under the administration of the minister of Labour, as was also the Industrial Disputes Investigation Act of 1907. Subsequently the minister was charged with the direction of the Combines Investigation Act passed in 1910 (9-10 Edw. VII, cap. 9).

The attitude of the department of Labour towards both parties to industrial disputes is essentially that of an inquirer, or in some cases that of a mediator. As soon as a strike is reported in the press or by correspondence of the department, an official communicates with each side—with the employers, and with the representatives of the men—asking information as to the cause of the trouble, the number of men concerned, and any other particulars that may be available; the department then keeps in touch with the parties by inquiries from time to time until the dispute is ended, full particulars as to duration and settlement being reported. If a strike is of large dimensions, the department sometimes sends a representative to the spot in order to investigate the matter, so that the minister may be fully informed on the subject. Under the Conciliation and Labour Act, if one party to a dispute makes application to the minister, a conciliator may be appointed who will endeavour to bring about a settlement. The deputy minister of Labour has frequently acted in the capacity of conciliator.

Under the Industrial Disputes Investigation Act, 1907, a distinction is drawn between disputes affecting coal mines

and public utility industries (railways of all kinds, shipping, telephones and telegraphs, gas and electric works), and in other industries. In the first-named class the Industrial Disputes Investigation Act 1907 provides that before a strike or lock-out may take place the dispute shall be made a matter of investigation before a Board of Conciliation and Investigation appointed under the act. Either party may apply to the minister of Labour for a board. These boards consist of three members, one appointed on the recommendation of the employer, one on the recommendation of the employees, and the third on the recommendation of the other two. It is the duty of this board to endeavour to bring about a friendly settlement of the dispute, and for purposes of getting at the facts it is clothed with all necessary powers. Should either party refuse or fail to nominate a member of the board, the minister may appoint one in the place of the refusing or defaulting party, and, if the member so chosen fails to elect a third member, the minister must make such selection. Thus in certain contingencies the minister makes two appointments out of three. The board's first duty is conciliation and then investigation, and in the event of no definite agreement being reached it becomes the duty of the board to make a report to the minister, containing recommendations as to the manner of settlement. The department requests from the two parties a statement as to their attitude respectively on these recommendations. In the event of the recommendations being accepted by each party, what amounts to an agreement is reached. In the event of either side refusing to accept the recommendations, the prohibition of strike or lock-out is removed.

Although the Industrial Disputes Investigation Act, 1907, applies directly only in the case of coal mining and public utility industries (as above set forth), and prohibits strikes and lock-outs in these industries pending inquiry before a board, the act permits the use of its machinery in the case of other industrial disputes, provided in these cases the consent of *both* parties is obtained. The department has frequently had occasion to approach the respective parties, explaining the law and acting as a medium

of negotiations, leading frequently to a solution of all differences.

It may be added that since the enactment of the Industrial Disputes Investigation Act, 1907, the machinery of the earlier Act (Conciliation and Labour) has not been called largely into requisition, probably because of the above-stated feature of the Industrial Disputes Investigation Act.

The Deputy Ministers

From what has gone before, it may readily be inferred that the deputy heads of departments play an important part in the administration of the country's affairs. Upon them falls in great measure the responsibility of carrying on the business of the executive government. The busy minister, with his manifold duties towards the crown, his colleagues, parliament, his constituents, and the public at large, must perforce leave the greater part of the business of his department to his deputy, who brings to the task the knowledge and experience which his permanent position enables him to acquire. Governments come and go. Even in the same administration changes occur with more or less frequency, but the deputy minister remains, to render to successive ministers that loyal assistance and support which they have a right to expect, and without which departmental administration could not be successfully carried on. Taking no part in politics, the deputy head regards himself as a trustee for the ministry of the day, bound to serve the government in all things so far as he properly can. He is of course bound by a higher sanction to refuse to do, or acquiesce in the doing of, anything contrary to law, or anything which, though not technically illegal, may be opposed to his sense of propriety. He may also state to his minister his objections to a course which, while not comprised within either of these categories, he may conceive to be injurious to the public interest, and acquaint him with his views of the consequence of a proposed line of action; but having done this much, his duty is clear. He is in office to carry out the policy of the head of the department, upon whom rests the responsibility for all his official acts.

The deputy head is a member of the civil service appointed by the governor in council and holds office during pleasure. He is not, as some suppose, a semi-minister, for he occupies no advisory relation towards the crown, nor does he possess any representative character, being merely the deputy of his minister. This distinction was more clearly recognized in the early years of Confederation than at the present day. The statutes establishing the principal departments and constituting the office of deputy head, invariably and with design, speak of that officer as the 'deputy *of the* minister,' and such continued to be the rule until a comparatively recent period, when the title of 'deputy minister' began to supplant the older form. However, there has not been any corresponding change in the status of the deputy heads, who occupy the same relation towards the heads of the public departments as they did in the beginning.

Occasionally a suggestion is tentatively put forward as to the advisability of introducing into Canada the English system of parliamentary under-secretaries, who, though members of the administration, are in a real sense 'deputy ministers' in that, while possessing seats in parliament and a certain responsibility of their own, they are subordinate in their official capacity to the members of the cabinet. The advantages of this plan are chiefly experienced in parliament, where the under-secretary in replying to questions, in explaining policy, and in defending the acts of the government, affords much aid to the responsible minister. In Canada it would be equally effective in these respects, and, in addition, would relieve the minister of a mass of work connected with politics and patronage which absorbs much of his time, and from which the imperial cabinet minister is relatively free.

In England a cabinet minister is so hedged about with forms as to be almost unapproachable. An interview with him can be secured only upon the presentation of suitable letters of introduction, and after divers conferences with one or more private secretaries. By this means the minister has leisure to devote adequate time to the consideration of the affairs of state. In democratic Canada a different order of things prevails. Cabinet ministers are quite unprotected.

Every free and independent elector considers that he has a right to interview even the first minister, upon all manner of irrelevant topics, at any hour of the day or in any place, without notice or warning of any kind, and he considers himself much aggrieved when occasionally intercepted by the vigilance of a private secretary in the act of forcing his way into the ministerial presence.

That parliamentary under-secretaries would relieve Canadian cabinet ministers individually from much labour and many annoyances, both inside and outside parliament, is probable. Whether the plan would conduce to the more effective working of the public departments is open to question, and it is also problematical to what extent a Canadian minister could safely emulate the exclusiveness of his imperial prototype.

Private Secretaries to Ministers

It is the undoubted right of a cabinet minister to choose his own secretary, either from within or without the ranks of the service, as he may elect. The importance of the office depends largely upon the aptitudes of the incumbent, and the personal relations existing between him and his chief. A practical knowledge of shorthand and typewriting is nowadays essential. With this equipment a private secretary can conduct the mechanical part of correspondence, but if that be the limit of his usefulness, he falls far short of the requirements of the office and of what his minister has a right to expect of him.

No position is so completely what the holder chooses to make it as that of private secretary to a minister of the crown. If he is content to act as an amanuensis only, with one eye on the clock, an amanuensis he will remain till the end of his days. If, on the contrary, he displays an intelligent interest in his work ; if, ignoring hours and disregarding his own personal convenience, he is always at his post, ' never in the way and never out of the way,' as Charles II used to say of the Earl of Godolphin ; if he is assiduous in the performance of his duties ; if he thinks for his minister and is

ever on the alert to anticipate his wishes; if he is prudent, tactful, faithful and discreet, he can make himself indispensable to his chief, and at the same time lay up a store of knowledge and experience that will stand him in good stead some day.

The above is true of all private secretaries, but doubly so in the case of the private secretary to the prime minister, who holds one of the most onerous and responsible posts in the public service. So well is this recognized in England that the office is eagerly sought as the gate to high preferment.

The Library of Parliament

The parliamentary library is under the management of joint librarians, one styled the general librarian and the other the parliamentary librarian, who report direct to parliament, at the beginning of every session, on the state of the library. There is also a joint committee of both houses on the library, while the executive control over the staff appertains by custom to the prime minister. Each librarian enjoys the rank and salary of a deputy head.

The parliamentary library is what its name imports—a library for the use of members of parliament and of the public service. It is not primarily intended to serve the purposes of a public library for the citizens of Ottawa, though during the parliamentary recess the residents of the capital incidentally enjoy the advantages which it confers.

The library building was originally intended to hold 120,000 volumes, but by some miscalculation the actual shelf room never exceeded provision for 75,000. When it is considered that there are at the present time (1912) 400,000 books within its walls, some idea may be formed of its congested condition.

The Civil Service Commission

In the year following Confederation, the governor in council appointed the first of what was destined to be a series of royal commissions, to inquire into the state and require-

ments of the civil service. This commission submitted, in due course, a scheme for the reconstitution of the service, which was adopted, and for eleven years, so far as the inside service was concerned, formed the basis of its organization.

In those days appointments to the service were quite frankly political, no test of fitness being required. When a vacancy occurred, the minister nominated a friend for the position, and he was appointed as a matter of course. It is right to add, however, that even at that early period there were several redeeming features in the administration of the public service. In the first place, the tenure was virtually permanent. Canada has never been cursed with the barbarous system, long in vogue in the United States, under which every public servant, no matter how diligent, faithful and competent he might be, was turned out of office at each change of government. So long as a man behaved himself and abstained from interference in politics, in the Canadian service he has always been secure. Then again, while political influence was a potent factor in securing admission to the service, once in, promotion, generally speaking, went according to merit, or at any rate was not influenced by political considerations. Now and then there might have been an exception to this rule, but still the rule held good.

A commission appointed in 1880 reported strongly against the then existing mode of appointment, and urged that Canada should follow the example of the mother country by instituting a system of open competition to govern entrance into the service, with promotion by merit. To this end they recommended placing the service under a board of civil service commissioners. The time was not felt to be opportune for the adoption of this plan in its entirety, but an act was passed in 1882 (45 Vict. cap. 4) reorganizing the service and providing for the establishment of a Board of Examiners whose duty it should be to examine all candidates for admission thereto, and to give certificates of qualification to those who successfully passed the prescribed tests. This board was appointed in the summer of 1882, and for twenty-five years discharged its functions until superseded by the present Civil Service Commission.

The establishment of an educational qualification was no doubt an improvement upon prevailing conditions, and during the earlier years of its existence the board rendered a service to ministers of the crown in intervening between them and applicants for office. The relief thus afforded, however, was but temporary. The examinations were easy. They were not competitive, and with the lapse of time the list of qualified aspirants grew apace, until almost every person became eligible, and things were as before.

Still, successive governments shrank from effecting any organic change, and, beyond occasionally amending the Civil Service Act and appointing fresh commissions of inquiry every ten or twelve years, did nothing. One of these bodies, created in 1892, renewed the recommendations of its predecessor for the appointment of a permanent commission to regulate the service, but with no material result. Indeed, things kept getting worse, for the periodical amendments made to the act were for the most part designed to meet particular circumstances as they arose, and, so long as the special occasion was served thereby, slight regard appears to have been paid to the effect of the amendments upon the symmetry of the act as a whole. So incongruities multiplied. At length, forty years after the first steps had been taken to improve the service, the government resolved upon a radical reform. In 1907 it entrusted to another royal commission the task of instituting a thorough inquiry into the working of the whole system. The commissioners went fully into the question, and in a report which caused some stir at the time, discussed the subject from many points of view. They unsparingly condemned the exercise of political influence in the matter of appointments ; found fault with the existing classification ; pointed out that the salaries were inadequate ; and advocated the restoration of the superannuation system, with added provision for the support of the widows and orphans of deceased civil servants. Placing a wide interpretation upon their instructions, they went on to criticize the administration of the public departments in regard to matters of policy.

Their exhaustive report appeared in the early part of

1908, and the same session saw an act placed on the statute book of far-reaching importance to the service. By this act the government divested itself of the ordinary exercise of its power of appointment to the civil service, and entrusted it to a commission consisting of two members appointed by the governor in council, but removable only on an address of the Senate and House of Commons. With certain exceptions, the system of competitive examination was established for the filling of all positions in the inside service below that of deputy head. These examinations are held at stated intervals, under regulations of the commission approved by the governor in council. Before holding such examination the commission is furnished by each department with a list of permanent officers and clerks likely to be required within the next six months. On this basis the commission computes the number of competitors to be selected at the next ensuing examination, placing any remaining over from the last examination who have not received appointments at the head of the list. Thereupon the commission advertises, and otherwise gives notice of the examinations, stating the character and number of the positions to be competed for. When a department has need of the service of a clerk, the deputy head, with the approval of his minister, applies to the commission, which selects from the list of successful competitors a suitable person for the required duty. These selections are, as far as practicable, in the order of merit, but latitude is given to the commission permitting it in certain cases to appoint the person who has shown special qualifications for the position to be filled. The commission forthwith notifies the Treasury Board and the auditor-general of the name and position in the service of each clerk supplied to any department. The head of a department, on a report in writing of the deputy head, has the right to reject any clerk supplied by the commission within six months, at the expiration of which period he is deemed to have been permanently accepted.

The civil service is divided by the act of 1908 into two main divisions, the inside service and the outside service. The jurisdiction of the commission is confined to the inside

service, save as regards the holding of examinations for the outside service, which it is empowered to do by an order-in-council transferring to it the work of the old Board of Civil Service Examiners.

The inside service, under the deputy heads, is divided into three divisions, each of which has two subdivisions. Subdivision A of the first division consists of the officers having the rank of deputy heads but not being deputy heads, assistant deputy ministers, and the principal technical administrative and executive officers. Subdivision B consists of chief officers of lesser importance than those forming subdivision A.

The second division consists of those clerks having duties of the same character, but of lesser importance than those of the first division. This division also has two similar subdivisions.

The third division consists of those whose duties are copying and routine work under direct supervision. It also is divided into subdivisions A and B.

Promotions, other than from the third to the second division, continue to be made by the governor in council, upon the recommendation of the head of the department, based on a report in writing from the deputy head, but they require in addition a certificate of qualification from the commission to be given with or without examination as the commission may determine.

The Civil Service Commission has now (1912) been in operation for four years, not an extended period when viewed absolutely, yet long enough to form an opinion as to the result of what at its inception was looked upon by many as a venture. While the change may have operated to the disadvantage of individuals here and there, and while modifications in the act and regulations may be necessary from time to time, there can be little doubt that the experiment has proved on the whole successful.

The removal of the service from the political domain, besides being beneficial both to politics and to the service itself, has proved an immense boon to ministers of the crown and private members of parliament in lightening the burden

of patronage. In addition to these advantages, the examinations have set a higher standard of efficiency, and supplied a better class of young men and women than were secured under the old system. Under the skilful guidance of the commission there has been on the whole surprisingly little friction, and the public departments have fallen almost imperceptibly into the new order, perhaps the best test of the success of which is to be found in the fact that no one in authority would voluntarily revert to the old conditions of affairs.

The Commission of Conservation

The movement for the conservation of the natural resources of the Dominion had its origin in a joint conference of the representatives of the United States, Mexico, Canada and Newfoundland, which, on the invitation of the president of the United States, met at Washington in the early part of the year 1909 to consider the whole question from a continental point of view, wholly apart from political or national divisions. This North American Conference recommended the establishment of permanent conservation commissions in each of the countries represented thereat. The Canadian government, realizing the great importance of the project, gave it their hearty support by effecting the passage of the necessary legislation, and making suitable provision for the carrying on of the work.

The Canadian commission is composed of 32 members —12 *ex officio*, and 20 nominated by the governor in council. The *ex officio* members are the ministers of Agriculture, the Interior, and Mines, in the Dominion cabinet, and the members of each provincial government in Canada charged with the administration of the natural resources of that province. Of the nominated members, at least one in each province must be a member of a faculty of a university within such province. The president and secretary are likewise appointed by the governor in council.

In the constitution of this commission much care seems to have been taken to make it thoroughly representative of those classes and interests in the country most concerned

in the success of the movement, and best qualified to deal with the various problems which it presents. Men versed in administration, both in the Dominion and provincial spheres, others distinguished for their scientific attainments, and those who have achieved success in various forms of business enterprise, are here brought together to combine their varied knowledge and experience in the great work of effectively utilizing and conserving for succeeding generations the vast resources of the Dominion.

The functions of the commission are inquisitorial and advisory only. It possesses no executive or administrative powers. Its duty is to investigate the large questions with which it is called upon to deal, to collect and assimilate the information so secured, and to report the result of its labours to the government, with whom rests the responsibility of action.

The able and exhaustive address of the Hon. Clifford Sifton, chairman of the commission, delivered on the occasion of the first annual meeting held at Ottawa on January 18, 1910, set forth with great clearness the aim and objects of the commission. The chairman's staff consists of the secretary, the editor and assistant secretary, a draughtsman and two clerks. The necessary reports to the governor in council in relation to the affairs of the commission are made by the minister of Agriculture.

The International Joint Commission

On June 13, 1902, the president of the United States approved an act of Congress providing for the appointment of an international commission of six members, three representing the interests of Canada and three from the United States, to investigate and report upon the conditions and uses of the waters adjacent to the boundary line between the United States and Canada. This invitation was accepted on the part of Canada, and in December 1903 William Frederick King was appointed as one of the Canadian members of such body, which was known as the International Waterways Commission. In January 1905 James Pitt Mabee and Louis Coste, C.E., were named to act in conjunc-

tion with King, and on May 20 following Mabee was appointed chairman of the Canadian section of the commission, with Thomas Coté as secretary. Coté acted as secretary to the full commission up to the appointment by the United States government, on August 1, 1905, of L. C. Sabin as secretary of the United States section. The United States members of the commission were appointed on October 2, 1903. They were Colonel O. H. Ernst, corps of engineers United States Army, George Clinton, attorney-at-law of Buffalo, New York, and Professor Gardner S. Williams of Ithaca, New York. The Canadian section held its first meetings at Ottawa on March 6 and 7, 1905.

Among the subjects they were directed by the government of Canada to consider were :

1. The proposed diversion southward by the Minnesota Canal and Power Company of Duluth, of certain waters in the State of Minnesota, that now flow north into the Rainy River and the Lake of the Woods.

2. The diversion about a mile and a half east of the town of Sault Ste Marie of part of the waters of the St Marys River into the Hay Canal entirely through American territory. The River St Marys now forms part of the boundary between the United States and Canada, and the waters of the river are clearly international. The Canadian vessels of necessity are using the Hay Canal, but no treaty has been made concerning their right.

3. Inquiry into the effect on the levels of Lakes Huron and Erie of the construction of the Chicago Canal.

4. The building of the dam and other obstructions on the St John River, flowing through the State of Maine into New Brunswick, contrary to the express stipulation of the Ashburton Treaty.

The United States section held its first meeting at Washington on May 10, 1905, and completed its organization by electing Colonel Ernst as chairman.

It was soon seen that the United States government placed a much narrower construction upon the act of Congress authorizing the appointment of the commission than that applied to it by the government of Canada, which held that

the scope of its powers covered all waters adjacent to the boundaries of the two countries. The United States, on the other hand, understood the inquiries of the commission to be limited to the waters of the Great Lakes only. Upon their persistence in this view, the Canadian government yielded the point and the narrower construction prevailed. On May 25, 1905, the full commission held its first meeting at Washington. At this meeting Colonel Ernst was elected chairman, it being agreed that at meetings of the full commission held on United States territory the chairman of the United States section should preside, and at meetings held on Canadian territory the chairman of the Canadian section should preside. It was decided that for the present the offices of the Canadian section should be established in Toronto, and those of the United States section in Buffalo. Subsequently the Canadian section decided to establish its permanent quarters in Ottawa. At later meetings various questions were discussed from time to time, among them being :

A. The uses of the waters at Sault Ste Marie for power purposes, and the regulations necessary to ensure an equitable division of the waters between the two countries and the protection of the navigation interests.

B. The uses of the waters of the Niagara River for power purposes, and the regulations necessary to ensure an equitable division of the waters between the two countries and the protection of Niagara Falls as a scenic spectacle.

C. The alleged differences in the marine regulations of the two countries with respect to signal lights, and the advisability of adopting uniform signals for both countries.

D. The advisability of building controlling works at the outlet of Lake Erie, including the effect upon the levels of the Lakes and upon their shores, and upon the River St Lawrence.

E. The diversion southward by the Minnesota Canal and Power Company of Duluth, of certain waters in the State of Minnesota that now flow north into the Rainy River and the Lake of the Woods.

F. The effect of the Chicago Drainage Canal upon the levels of Lakes Michigan, Huron, Erie and Ontario, and upon the River St Lawrence.

G. Delimiting the international boundary on the international waterways, and delineating the same on modern charts.

H. The suppression or abatement of illegal fishing on the Great Lakes.

I. The location and construction of common channels.

J. Regulations to govern navigation in narrow channels.

K. Protection of shores from damage due to deepening of channels and increased speed.

L. The transmission of electric energy generated in Canada, to the United States, and vice versa.

Towards the close of 1905 J. P. Mabee, having been appointed to the Ontario bench, resigned his position as chairman of the Canadian section, and George C. Gibbons, K.C., of London, Ontario, was appointed in his stead. In March 1907 W. F. King resigned from the commission and was succeeded by William J. Stewart, chief engineer of the Hydrographic Survey of Canada.

On April 11, 1908, Great Britain and the United States concluded a treaty respecting the demarcation of the international boundary between the United States and Canada. For the purposes of this treaty the boundary is divided into eight sections: (1) Through Passamaquoddy Bay; (2) from the mouth to the source of the St Croix River; (3) from the source of the St Croix to the St Lawrence River; (4) from its intersection with the St Lawrence River to Pigeon River; (5) from the mouth of Pigeon River to the north-westernmost point of the Lake of the Woods; (6) from the north-westernmost point of the Lake of the Woods to the summit of the Rocky Mountains; (7) from the summit of the Rocky Mountains to the Gulf of Georgia; (8) from the 49th parallel to the Pacific Ocean.

These divisions are dealt with for the most part by special commissions appointed for the purpose, but Article IV of the treaty charges the existing Waterways Commission to ascertain and re-establish accurately that portion of the boundary line between St Regis and Pigeon River, that is to say, from its intersection with the St Lawrence River, through the Great Lakes to the western shore of Lake Superior. This work is still in progress.

Meanwhile informal negotiations had been going on looking to the creation of a new commission with enlarged powers for dealing with all international questions of water rights on the frontier between the United States and Canada. These negotiations finally resulted in the treaty of January 11, 1909, establishing the present International Joint Commission, which is clothed with authority to deal not merely with boundary waters, but also with 'all questions which are now pending between the United States and the Dominion of Canada, involving the rights, obligations or interests of either in relation to the other or to the inhabitants of the other, along their common frontier, and to make provision for the adjustment and settlement of all such questions as may hereafter arise.' This treaty was approved by the parliament of Canada on May 19, 1911 (1-2 Geo. V, cap. 28). Articles VII and X respectively provide that:

Article VII

The High Contracting Parties agree to establish and maintain an International Joint Commission of the United States and Canada composed of six Commissioners, three on the part of the United States appointed by the President thereof, and three on the part of the United Kingdom appointed by His Majesty on the recommendation of the Governor in Council of the Dominion of Canada.

Article X

Any questions or matters of difference arising between the High Contracting Parties involving the rights, obligations, or interests of the United States or of the Dominion of Canada, either in relation to each other or to their respective inhabitants, may be referred for decision to the International Joint Commission by the consent of the two Parties, it being understood that on the part of the United States any such action will be by and with the advice and consent of the Senate, and on the part of His Majesty's Government with the consent of the Governor-General in Council. In each case so referred, the said Commission is authorized to examine into and report upon the facts and circumstances of the particular ques-

tions and matters referred, together with such conclusions and recommendations as may be appropriate, subject, however, to any restrictions or exceptions which may be imposed with respect thereto by the terms of the reference.

A majority of the said Commission shall have power to render a decision or finding upon any of the questions or matters so referred.

If the said Commission is equally divided, or otherwise unable to render a decision or finding as to any questions or matters so referred, it shall be the duty of the Commissioners to make a joint report to both Governments, or separate reports to their respective Governments, showing the different conclusions arrived at with regard to the matters or questions so referred, which questions or matters shall thereupon be referred for decision by the High Contracting Parties to an Umpire chosen in accordance with the procedure prescribed in the fourth, fifth, and sixth paragraphs of Article XLV of The Hague Convention for the pacific settlement of international disputes, dated the 18th October, 1907. Such Umpire shall have power to render a final decision with respect to those matters and questions so referred on which the Commission failed to agree.

The British commissioners appointed by His Majesty on November 10, 1911, under Article VII were Thomas Chase Casgrain, Henry Absalom Powell and Charles Alexander Magrath. The United States section, appointed in the preceding March, consisted of Thomas Henry Carter, James Tawney and Frank Sherwin Streeter. On the death of Carter, the Hon. George Turner was appointed to fill the vacancy.

In January 1912 the first meeting of the full commission was held in Washington, at which certain rules of procedure were adopted. It was agreed that regular sessions of the commissioners should be held annually at Washington beginning on the first Tuesday of April, and at Ottawa beginning the first Tuesday of October. L. J. Burpee and L. White Bussey were appointed secretaries of the British and American sections respectively.

This body, known as the International Joint Commission, has superseded the old International Waterways

Commission, which is now *functus officio* save as respects the laying down of the boundary through the Great Lakes, with which duty it was especially charged by the treaty of April 11, 1908, and upon which it is still engaged.

The High Commissioner

In the year 1879 certain members of the Canadian ministry then in England represented, in a confidential memorandum addressed to the secretary of state for the Colonies, the need which existed of providing the means of constant and confidential communication 'between Her Majesty's Government and Her local advisers in Canada in extension of the more formal relations subsisting through the correspondence of the Secretary of State for the Colonies with the Governor-General.' The memorandum went on to observe that

> it appears to the Canadian Government eminently desirable to provide for the fullest and most frank interchange of views with Her Majesty's Government, and for the thorough appreciation of the policy of Canada on all points of general interest. Otherwise there appears to be danger of a feeling growing up of indifference, if not of actual antagonism and irritation upon both sides. The idea must be avoided that the connection of Canada with the British Empire is only temporary and unabiding, instead of being designed to strengthen and confirm the maintenance of British influence and power.
>
> It is now being found in practice that there are constantly questions arising, connected with the administration of affairs in Canada, requiring discussions in a mode, and to an extent wholly impracticable by the ordinary channel of correspondence through the Governor-General; and periodical visits have to be made to London for this purpose by the important members of the Canadian Government, entailing serious inconvenience.

Her Majesty's government having returned a sympathetic answer, an act was passed in the following session of the Canadian parliament, constituting the office of high commissioner for Canada in the United Kingdom. His duties were thus defined:

(1) To act as representative and resident Agent of the Dominion in the United Kingdom, and in that capacity to execute such powers and to perform such duties as may from time to time be conferred upon and assigned to him by the Governor in Council ;

(2) To take the charge, supervision and control of the Immigration offices and agencies in the United Kingdom, under the Minister of Agriculture ;

(3) To carry out such instructions as he may from time to time receive from the Governor in Council respecting the commercial, financial and general interests of the Dominion in the United Kingdom and elsewhere.

A few days after this statute received the royal assent, Sir Alexander Galt was appointed high commissioner. He held the position until May 31, 1883, when Sir Charles Tupper, at that time a member of Sir John Macdonald's cabinet, was appointed to perform the duties of the office without salary, thus enabling him to retain his portfolio of Railways and Canals and his seat in the House of Commons. On May 23, 1884, Sir Charles withdrew from the Canadian government, and on the following day was appointed high commissioner in the usual manner. In January 1887 he resigned this office to re-enter the cabinet, this time as minister of Finance. He remained in the ministry until May 1888, when he returned to the high commissionership, which he held until January 1896, when he was called to be prime minister of the Dominion. Sir Charles was succeeded in the high commissionership by Lord Strathcona and Mount Royal.

The Agent of Canada in Paris

In the year 1882 the Hon. Hector Fabre, at that time a member of the Senate, having been selected by the government of the Province of Quebec to reside in Paris in order to promote their financial, commercial and other interests, the government of Canada commissioned him to act in a similar capacity as agent for the Dominion. Instructions furnished the agent on October 3, 1882, thus defined his duties :

'To spread information in France and on the continent of Europe regarding Canada, its resources and its advantages

as a field for emigration. That he will also solicit the attention of the capitalists of France to the minerals, timber and fish products of Canada and the promise which they offer in return for their development.'

The agent is directed to conform to any instructions which he may receive from the high commissioner for Canada in London regarding steps to be taken to improve the commercial relations between France and Canada, and to report monthly to the secretary of state the efforts which he may have made to carry out the duties entrusted to him.

Fabre continued to act as agent of the Canadian government in Paris until his death in 1910. His successor was also drawn from the Senate in the person of the Hon. Philippe Roy, who on May 1, 1911, was appointed 'Commissaire Général du Canada en France,' without, however, any change in the status enjoyed, or functions discharged by, his predecessor.

The Supreme Court

The Supreme Court of Canada was constituted in the year 1875 by act of the parliament of Canada 38 Vict. cap. 2. It consists of a chief justice styled the chief justice of Canada, and five puisne judges, of whom at least two must be from the Quebec bench or bar. Five judges form a quorum, but if both parties consent to a hearing before four judges, such hearing may take place. Should the full court be evenly divided on a case, the judgment of the court below stands.

The Supreme Court possesses an appellate civil and criminal jurisdiction throughout the Dominion, but no appeal is permitted in a criminal case except as is provided in the criminal code. In civil cases an appeal lies to the Supreme Court from the highest court of final resort in each province, subject to certain conditions which are set out in chapter 139 of the revised statutes of Canada. The rules of practice of the Supreme Court are printed in volume 38 of the Supreme Court reports.

The judgments of the Supreme Court are declared by the organic statute to be final and conclusive in all cases, saving the royal prerogative, which means that no appeal from the

court's decisions can be carried to England except by leave of the Judicial Committee of the Privy Council. Leave to appeal is sought by petition addressed to His Majesty the king in council. Such petitions must be accompanied by duly authenticated documents embodying the judgments of the Supreme Court which is appealed from, and the factums in the case. Leave to appeal is not as a rule granted unless the amount at issue is considerable, or some important principle is involved. Admiralty cases coming from the Supreme Court by way of appeal from the Court of Exchequer may in turn be appealed to the Judicial Committee of the Privy Council, without specific permission from that tribunal.

Important questions of law or fact touching any matter may be referred by the governor in council to the Supreme Court for hearing and consideration, and the opinion of the court upon any such reference, although advisory only, is, for all purposes of appeal to His Majesty in council, treated as a final judgment of the court between parties.

The Senate and House of Commons may also refer to the Supreme Court, or to any two judges thereof, for examination and report, questions relating to private bill legislation in either house. Advantage is, however, seldom taken of this provision.

The act constituting and establishing the Supreme Court (38 Vict. cap. 2) was, by proclamation dated September 17, 1875, declared to be in force from and after September 18, 1875, as regards the appointments of judges and officers of the court, the organization thereof, and the making of general rules and orders. The other provisions of this act and the judicial functions of the Supreme Court were by proclamation, dated January 10, 1876, made operative from January 11, 1876.

The Exchequer Court

The act of the parliament of Canada (38 Vict. cap. 2) establishing a Supreme Court likewise created the Court of Exchequer. It enacted that

> the Exchequer Court shall have and possess concurrent original jurisdiction in the Dominion of Canada, in all

> cases in which it shall be sought to enforce any law of the Dominion of Canada relating to the revenue, including actions, suits and proceedings, by way of information, to enforce penalties and proceedings, by way of information *in rem*, as well as in *qui tam* suits for penalties or forfeitures as where the suit is on behalf of the Crown alone; and the said Court shall have exclusive original jurisdiction in all cases in which demand shall be made or relief sought in respect of any matter which might in England be the subject of a suit or action in the Court of Exchequer on its revenue side against the Crown or any officer of the Crown.

By section 59 the Exchequer Court was given concurrent original jurisdiction with the courts of the several provinces 'in all other suits of a civil nature at common law or equity, in which the Crown in the interest of the Dominion of Canada is plaintiff or petitioner.' Section 4 provides that the chief justice and judges of the Supreme Court of Canada should be respectively the chief justice and judges of the Exchequer Court of Canada. In the year 1887 a statute was passed (50-51 Vict. cap. 16) by which the chief justice and judges of the Supreme Court ceased to be judges of the Exchequer Court, and provision was made for the appointment of a single judge with the title of judge of the Exchequer Court. By this act the jurisdiction of the court was materially enlarged. In cases when the amount in controversy exceeds $500 an appeal lies from a judgment of the Exchequer Court to the Supreme Court of Canada as a matter of course, and thence to the Judicial Committee of the Privy Council. In certain other cases, not directly involving monetary considerations, an appeal may be allowed by a judge of the Supreme Court.

Prior to 1891 the various vice-admiralty courts throughout Canada were imperial tribunals, the judges holding their commissions directly from the crown. In that year an act of the imperial parliament known as the Admiralty Act, 1891, created the Exchequer Court of Canada a Colonial Court of Admiralty within Canada, and invested it with all the jurisdiction, powers and authority conferred by the Colonial Courts of Admiralty Act of the United Kingdom.

Power was given to the governor-general in council to constitute Admiralty districts in Canada, and to appoint local judges in admiralty for such districts.

In interlocutory matters there is an appeal from the local judge in admiralty only to the judge of the Exchequer Court. In final cases an appeal lies either to the Exchequer Court or to the Supreme Court. In the event of the appeal being first taken to the judge of the Exchequer Court, there is a further appeal to the Supreme Court.

By warrant dated August 17, 1899, addressed by the lords commissioners of the Admiralty to the Exchequer Court of Canada, the said court, upon any proclamation being made by the vice-admiral for the time being of Canada, that war has broken out between His Majesty and any foreign state, and not otherwise, is authorized and required to take cognizance of, and judicially to proceed upon all captures, recaptures, seizures, prizes and reprisals of all ships, vessels and goods seized and taken, and which are or shall be brought within the limits of the said court. The lords commissioners of the Admiralty suggested Halifax and Victoria as places within the jurisdiction of the court at which it would be convenient for prize courts to sit. In the session of 1912 an act amending the Exchequer Court Act was passed, authorizing the governor in council to appoint an assistant judge of the Exchequer Court. This office was filled on April 4, 1912.

In this rapid survey of the administrative government of Canada one fact stands out with marked distinctness—the pre-eminence of the prime minister, alike in the councils of his sovereign, in the deliberations of parliament, and in the management of his party. The rise and growth of this office affords a most interesting study. Sir Robert Walpole is generally regarded as the first British statesman to whom the title was applied, but so far from the office being generally recognized in his day, the charge that he arrogated to himself a pre-eminence over his colleagues formed one of the counts against him in his last great struggle for power :

When Walpole fell (in 1741), Sandys, in the course of

his indictment, said : 'According to our Constitution we have no sole or Prime Minister ; we ought always to have several Prime Ministers or officers of State ; every such officer has his own proper department, and no officer ought to meddle in the affairs belonging to the department of another!' At the same time a protest was signed in the House of Lords to this effect : 'We are persuaded that a sole or even a first Minister is an officer unknown to the law of Britain, inconsistent with the constitution of this country, and destructive of liberty in any country whatever.' [1]

Walpole himself repudiated the title with derision : 'Having first,' he says of his opponent, 'conferred upon me a kind of mock dignity and styled me the prime minister, they carry on the fiction which has once heated their imaginations, and impute to me an unpardonable abuse of that chimerical authority which only they have thought it necessary to bestow.' Yet from his time onward the office has been a living reality, ever increasing in influence and engrossing power, until it has become the dominant factor in the government of England, and of those representative institutions to which that government has given birth.

It has been observed, with some degree of warrant, that in its essential features the form of government which Canada enjoys is not so far removed from that of the United States as at first sight may appear. In the United States the executive power is committed by the people to one man for four years. In Canada the governance of the people is in effect entrusted by their representatives to one man for an indefinite period. One nation styles its ruler the president, the other the prime minister. Stripped of ceremonial forms and phrases, such is, with certain qualifications, the broad fact. Of course, like most analogies, this one must not be pressed too far. Canada is not a sovereign power. Her prime minister's jurisdiction is therefore circumscribed, and extends in its plenitude only over the domestic concerns of the Dominion. Nor do his electors disperse

[1] *George II and his Ministers*, by Reginald Lucas, pp. 74-5. The same author says of Chatham : 'The title of Prime Minister he always repudiated, both in public and private life' (*op. cit.*, p. 353).

after casting their votes. They retain their corporate authority intact, exercise a vigilant supervision over the administration of public affairs, and may at any time revoke their mandate. On the other hand the prime minister possesses, in the power of dissolution, a weapon which he can sometimes effectively employ to strengthen his position, while under responsible government the influence of the crown is ever present to moderate the violence of opposing factions, and to serve as a perpetual reminder to our public men that there is a higher allegiance than that of party. In this admirable system of checks and balances the true excellence of the Canadian form of government is to be found.

Joseph Pope

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